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Filing date: **10/18/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	94002525
Party	User Terra Sul Corporation a/k/a Churrascaria Boi Na Brasa
Correspondence Address	EAMON J WALL WALL & TONG LLP 25 JAMES WAY EATONTOWN, NJ 077724 UNITED STATES docketing@walltong.com, lcrater@walltong.com, ewall@walltong.com
Submission	Plaintiff's Notice of Reliance
Filer's Name	Eamon J. Wall
Filer's e-mail	ewall@walltong.com
Signature	/Eamon J. Wall/
Date	10/18/2012
Attachments	Notice of Reliance 300-598.pdf ( 299 pages )(7030835 bytes )

c. **Method of Sharing**

If all of the other insurance permits contribution by equal shares, we will follow this method also.

Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

5. **Premium Audit.**

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period. Audit premiums are due and payable on notice to the first Named Insured. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

6. **Representations.**

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

7. **Separation Of Insureds.**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

8. **Transfer Of Rights Of Recovery Against Others To Us.**

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

9. **When We Do Not Renew.**

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in

the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

**SECTION V - DEFINITIONS**

1. "Advertising injury" means injury arising out of one or more of the following offenses:
  - a. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
  - b. Oral or written publication of material that violates a person's right of privacy;
  - c. Misappropriation of advertising ideas or style of doing business; or
  - d. Infringement of copyright, title or slogan.
2. "Auto" means a land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment."
3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
4. "Coverage territory" means:
  - a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
  - b. International waters or airspace, provided the injury or damage does not occur in the course of travel or transportation to or from any place not included in a. above; or
  - c. All parts of the world if:
    - (1) The injury or damage arises out of:
      - (a) Goods or products made or sold by you in the territory described in a. above; or
      - (b) the activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; and
    - (2) The insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in a. above or in a settlement we agree to.
5. "Employee" includes a "leased worker." "Employee" does not include a "temporary worker."
6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
7. "Impaired property" means tangible property, other than "your product" or "your work," that cannot be used or is less useful because:
  - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
  - b. You have failed to fulfill the terms of a contract or agreement;if such property can be restored to use by:

- a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
  - b. Your fulfilling the terms of the contract or agreement.
8. "Insured contract" means:
- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
  - b. A sidetrack agreement;
  - c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
  - d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
  - e. An elevator maintenance agreement;
  - f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.
- Paragraph f. does not include that part of any contract or agreement.
- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing;
  - (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
    - (a) Preparing, approving or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or
    - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
  - (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection or engineering services.
9. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker."
10. "Loading or unloading" means the handling of property:
- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
  - b. While it is in or on an aircraft, watercraft or "auto";
  - c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;
- but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto."
11. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
  - b. Vehicles maintained for use solely on or next to premises you own or rent;
  - c. Vehicles that travel on crawler treads;
  - d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
    - (1) Power cranes, shovels, loaders, diggers or drills; or
    - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
  - e. Vehicles not described in a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
    - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lightning and well servicing equipment; or
    - (2) Cherry pickers and similar devices used to raise or lower workers;
  - f. Vehicles not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo. However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":
    - (1) Equipment designed primarily for:
      - (a) Snow removal;
      - (b) Road maintenance, but not construction or resurfacing; or
      - (c) Street cleaning;
    - (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
    - (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lightning and well servicing equipment.

12. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

13. "Personal injury" means injury, other than "bodily injury" arising out of one or more of the following offenses:

- a. False arrest, detention or imprisonment;
- b. Malicious prosecution;
- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies by or on behalf of its owners, landlord or lessor;
- d. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services; or
- e. Oral or written publication of material that violates a person's right of privacy.

14. a. "Products-completed operations hazard" includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

- (1) Products that are still in your physical possession; or
- (2) Work that has not yet been completed or abandoned.

b. "Your work" will be deemed completed at the earliest of the following times:

- (1) When all of the work called for in your contract has been completed.
- (2) When all of the work to be done at the site has been completed if your contract calls for work at more than one site.
- (3) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

c. This hazard does not include "bodily injury" or "property damage" arising out of:

- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle created by the "loading or unloading" of it;
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
- (3) Products or operations for which the classification in this Coverage Part or in our manual of rules includes products or completed operations.

15. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

16. "Suit" means a civil proceeding in which damages because of "bodily injury," "property damage," "personal injury" or "advertising injury" to which this insurance applies are alleged. "Suit" includes:

- a. An arbitration proceeding in which such damages are claimed and to which you must submit or do submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which you submit with our consent.

17. "Your product" means:

- a. Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
  - (1) You;
  - (2) Others trading under your name; or
  - (3) A person or organization whose business or assets you have acquired; and
- b. Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

"Your product" includes:

- a. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
- b. The providing of or failure to provide warnings or instructions.

"Your product" does not include vending machines or other property rented to or located for the use of others but not sold.

18. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

19. "Your work" means:

- a. Work or operations performed by you or on your behalf; and
- b. Materials, parts or equipment furnished in connection with such work or operations.

"Your work" includes:

- a. Warranties or representations made at any time with respect to the fitness, quality, durability or performance or use of "your work"; and
- b. The providing of or failure to provide warnings or instructions.

POLICY NUMBER: ACC 057900

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

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### LIMITATION OF COVERAGE TO DESIGNATED PREMISES OR PROJECT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
SCHEDULE

Premises: 70 ADAMS STREET #4  
NEWARK, NJ 07105

Project:

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

This insurance applies only to "bodily injury," "property damage," "personal injury," "advertising injury" and medical expenses arising out of:

1. The ownership, maintenance or use of the premises shown in the Schedule and operations necessary or incidental to those premises; or
2. The project shown in the Schedule.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EMPLOYMENT-RELATED PRACTICES EXCLUSION**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

- A. The following exclusion is added to paragraph 2., Exclusions of COVERAGE A-BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I-Coverages):

This insurance does not apply to:

"Bodily injury" to:

- (1) A person arising out of any:
  - (a) Refusal to employ that person;
  - (b) Termination of that person's employment; or
  - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" to that person at whom any of the employment-related practices described in paragraphs (a), (b) or (c) above is directed.

This exclusion applies:

- (1) Whether the Insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

- B. The following exclusion is added to paragraph 2., Exclusions of COVERAGE B-PERSONAL AND ADVERTISING INJURY LIABILITY (Section I-Coverages):

This insurance does not apply to:

"Personal injury" to:

- (1) A person arising out of any:
  - (a) Refusal to employ that person;
  - (b) Termination of that person's employment; or
  - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "personal injury" to that person at whom any of the employment-related practices described in paragraphs (a), (b) or (c) above is directed.

This exclusion applies:

- (1) Whether the Insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## TOTAL POLLUTION EXCLUSION ENDORSEMENT

This endorsement modifies insurance provided under the following:  
COMMERCIAL GENERAL LIABILITY COVERAGE PART

Exclusion f. under paragraph 2., Exclusions of COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I - Coverages) is replaced by the following:

This insurance does not apply to:

f. Pollution

(1) "Bodily injury" or "property damage" which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants at any time.

(2) Any loss, cost or expense arising out of any.

(a) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants; or

b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing, the effects of pollutants.

Pollutants means any solid, liquid, gaseous, or thermal irritant or containment including smoke, vapor, soot, fumes, acid, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

Cancellation No. 92047056

*Terra Sul Corporation v. Boi Na Brasa, Inc.*

**EXHIBIT A-9**

Offered by Terra Sul Corporation



COMMERCIAL LINES  
POLICY



**AMERICAN EQUITY**  
INSURANCE COMPANY

THIS POLICY CONSISTS OF:

- DECLARATIONS
- COMMON POLICY CONDITIONS
- ONE OR MORE COVERAGE PARTS. A COVERAGE PART CONSISTS OF:
  - One or more coverage forms
  - Applicable forms and endorsements

In Witness Whereof, We have caused this policy to be executed and attested, and, if required by state law, this policy shall not be valid unless countersigned by Our authorized representative.

*Barbara L. Sutherland*  
Secretary

*E. J. Keating*  
President

A100J (02/1999)



TS 000267

COMMERCIAL LINES POLICY  
COMMON POLICY DECLARATIONS

AMERICAN EQUITY INSURANCE COMPANY

☐ New ☒ Rewrite  
☐ Renewal ☐ Cross-Ref.

Scottsdale, Arizona

Policy No. ACC 080062

ACC 057900  
Policy Number

S/L 00365-99-01629

Named Insured and Mailing Address  
(No., Street, Town or City, County, State, Zip Code)  
CHURRASCARIA BOINA BRASA

This Insurance is Issued Pursuant to the New Jersey  
Surplus Lines Law.

NO FLAT CANCELLATION

70 ADAMS STREET STORE #4  
NEWARK NJ 07105

Agent and Mailing Address  
(No., Street, Town or City, County, State, Zip Code)  
Metcom Excess  
P.O. Box 3140

Agency No. 3100

Cliffside Park NJ 07010

Tax State NJ

Policy Period: From 06/14/1999 to 06/14/2000 at 12:01 A.M. Standard Time at your mailing address shown above.

Business Description: RESTAURANT

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY,  
WE AGREE WITH YOU TO PROVIDE THE INSURANCE STATED IN THIS POLICY.

THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE PARTS FOR WHICH A PREMIUM IS INDICATED.  
THIS PREMIUM MAY BE SUBJECT TO ADJUSTMENT

	PREMIUM
Commercial Property Coverage Part	\$ _____
Commercial General Liability Coverage Part	\$ 1,750.00
	\$ _____
	\$ _____
Other Charges	TOTAL ADVANCE PREMIUM \$ 1,750.00
POLICY FEE \$ 50.00	TOTAL OTHER CHARGES \$ 102.50
3% NJ S/L TAX 52.50	
	TOTAL \$ 1,852.50

Form(s) and Endorsement(s) made a part of this policy at time of issue\*:  
A104 10-1998, IL0017 11-1998, IL0021 04-1998, IL0208 04-1998, CL150 06-1993

A100(3/97)

\*Omits applicable Forms and Endorsements if shown in specific Coverage Part/Coverage Form Declarations.

Countersigned: Cliffside Park, NJ  
07/12/1999 NM

  
Countersigned by Authorized Representative

THESE DECLARATIONS TOGETHER WITH THE COMMON POLICY CONDITIONS, COVERAGE PART DECLARATIONS, COVERAGE PART COVERAGE  
FORM(S) AND FORMS AND ENDORSEMENTS, IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETE THE ABOVE NUMBERED POLICY  
Includes copyrighted material of Insurance Services Office, Inc. with its permission. Copyright, Insurance Services Office, Inc., 1983, 1984

A100 (03/1997)

ORIGINAL

TS 000268

A104 (10/1998)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

### SERVICE OF SUIT

Pursuant to any statute of any state, territory or district of the United States which makes provision therefore, we hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the Statute, or their successor or successors in office, as our true and lawful attorney upon whom may be served any lawful process in any action, "suit" or proceeding instituted by or on behalf of you or any beneficiary hereunder arising out of this contract of insurance, and hereby designate the following individual as the person to whom the said officer is authorized to mail process or a true copy thereof.

It is further agreed that service of process in such "suit" may be made upon the chief claims officer of the Company at 7676 E. Pinnacle Peak Road, Scottsdale, AZ 85255.

All other Terms and Conditions of this Policy remain unchanged.

A104 (10/1998)

TS 000269

## COMMON POLICY CONDITIONS

All Coverage Parts included in this policy are subject to the following conditions.

### A. Cancellation

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
  - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
  - b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

### B. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

### C. Examination Of Your Books And Records

We may examine and audit your books and record as they relate to this policy at any time during the policy period and up to three years afterward.

### D. Inspections And Surveys

1. We have the right to:
  - a. Make inspections and surveys at any time;
  - b. Give you reports on the conditions we find; and
  - c. Recommend changes.
2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:
  - a. Are safe or healthful; or
  - b. Comply with laws, regulations, codes or standards.
3. Paragraphs 1. and 2. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.
4. Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

### E. Premiums

The first Named Insured shown in the Declarations:

1. Is responsible for the payment of all premiums; and
2. Will be the payee for any return premiums we pay.

### F. Transfer Of Your Rights And Duties Under This Policy

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT**  
(Broad Form)

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS POLICY  
COMMERCIAL AUTO COVERAGE PART  
COMMERCIAL GENERAL LIABILITY COVERAGE PART  
EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE PART  
FARM COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART  
POLLUTION LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART  
PROFESSIONAL LIABILITY COVERAGE PART  
RAILROAD PROTECTIVE LIABILITY COVERAGE PART  
SPECIAL PROTECTIVE AND HIGHWAY LIABILITY POLICY NEW YORK DEPARTMENT OF TRANSPORTATION  
UNDERGROUND STORAGE TANK POLICY

1. The insurance does not apply:

A. Under any Liability Coverage, to "bodily injury" or "property damage":

- (1) With respect to which an "insured" under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
- (2) Resulting from the "hazardous properties" of "nuclear material" and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the "insured" is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

B. Under any Medical Payments coverage, to expenses incurred with respect to "bodily injury" resulting from the "hazardous properties" of "nuclear material" and arising out of the operation of a "nuclear facility" by any person or organization.

C. Under any Liability Coverage, to "bodily injury" or "property damage" resulting from "hazardous properties" of "nuclear material", if:

- (1) The "nuclear material" (a) is at any "nuclear facility" owned by, or operated by or on behalf of, an "insured" or (b) has been discharged or dispersed therefrom;
- (2) The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of, by or on behalf of an "insured"; or
- (3) The "bodily injury" or "property damage" arises out of the furnishing by an "insured" of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to "property damage" to such "nuclear facility" and any property thereat.

2. As used in this endorsement:

"Hazardous properties" include radioactive, toxic or explosive properties.

"Nuclear material" means "source material", "Special nuclear material" or "by-product material".

"Source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor".

"Waste" means any waste material (a) containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content, and (b) resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".

"Nuclear facility" means:

- (a) Any "nuclear reactor";
- (b) Any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing "spent fuel" or (3) handling, processing or packaging "waste";
- (c) Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the "insured" at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
- (d) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

"Property damage" includes all forms of radioactive contamination of property.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## NEW JERSEY CHANGES - CANCELLATION AND NONRENEWAL

This endorsement modifies insurance provided under the following:

BOILER AND MACHINERY COVERAGE PART  
BUSINESSOWNERS POLICY  
COMMERCIAL AUTOMOBILE COVERAGE PART  
COMMERCIAL CRIME COVERAGE PART\*  
COMMERCIAL GENERAL LIABILITY COVERAGE PART  
COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART  
EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE PART  
FARM COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
POLLUTION LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART  
PROFESSIONAL LIABILITY COVERAGE PART

- \* This endorsement does not apply to coverage provided for employee dishonesty (Coverage Form A), forgery or alteration (Coverage Form B), or public employee dishonesty (Coverage Forms O and P).

- A. Pursuant to New Jersey law, this policy cannot be cancelled or nonrenewed for any underwriting reason or guideline which is arbitrary, capricious or unfairly discriminatory or without adequate prior notice to the insured. The underwriting reasons or guidelines that an insurer can use to cancel or nonrenew this policy are maintained by the insurer in writing and will be furnished to the insured and/or the insured's lawful representative upon written request.

This provision shall not apply to any policy which has been in effect for less than 60 days at the time notice of cancellation is mailed or delivered, unless the policy is a renewal policy.

- B. Paragraph 2. of the Cancellation Common Policy Condition is replaced by the following:

2. If this policy has been in effect for less than 60 days, we may cancel this policy for any reason subject to the following:

- a. We may cancel this policy by mailing or delivering to the first Named Insured and any person entitled to notice under this policy written notice, of cancellation, at least:

- (1) 10 days before the effective date of cancellation if we cancel for:

- (a) Nonpayment of premium; or  
(b) Existence of a moral hazard, as defined in N.J.A.C. 11:1-20.2(f) as follows:

- (i) "The risk, danger or probability that the insured will destroy, or permit to be destroyed, the insured property for the purpose of collecting the insurance proceeds. Any change in the circumstances of an insured that will increase the probability of such a destruction may be considered a 'moral hazard'; and  
(ii) "The substantial risk, danger or probability that the character, circumstances or personal habits of the insured may increase the possibility of loss or liability for which an insurer will be held responsible. Any change in the character or circumstances of an individual, corporate, partnership or other insured that will increase the probability of such a loss or liability may be considered a 'moral hazard'".

- (2) 30 days before the effective date of cancellation if we cancel for any other reason.

- b. In the notice of cancellation which is sent to the first Named Insured, we will state the reason for cancellation.

C. The following is added to the Cancellation Common Policy Condition:

7. Cancellation of Policies In Effect For 60 Days or More

- a. If this policy has been in effect for 60 days or more, or is a renewal of a policy we issued, we may cancel this policy only for one or more of the following reasons:
- (1) Nonpayment of premium;
  - (2) Existence of a moral hazard, as defined in N.J.A.C. 11:1-20.2(f);
  - (3) Material misrepresentation or nondisclosure to us of a material fact at the time of acceptance of the risk;
  - (4) Increased hazard or material change in the risk assumed which we could not have reasonably contemplated at the time of assumption of the risk;
  - (5) Substantial breaches of contractual duties, conditions or warranties that materially affect the nature and/or insurability of the risk;
  - (6) Lack of cooperation from the insured on loss control matters materially affecting insurability of the risk;
  - (7) Fraudulent acts against us by the insured or its representative that materially affect the nature of the risk insured;
  - (8) Loss of or reduction in available insurance capacity;
  - (9) Material increase in exposure arising out of changes in statutory or case law subsequent to the issuance of the insurance contract or any subsequent renewal;
  - (10) Loss of or substantial changes in applicable reinsurance;
  - (11) Failure by the insured to comply with any Federal, State or local fire, health, safety or building or construction regulation, law or ordinance with respect to an insured risk which substantially increases any hazard insured against within 60 days of written notification of a violation of any such law, regulation or ordinance;
  - (12) Failure by the insured to provide reasonable and necessary underwriting information to us upon written request therefor and a reasonable opportunity to respond;
  - (13) Agency termination, provided:
    - (a) We document that replacement coverage at comparable rates and terms has been provided to the first Named Insured, and we have informed the first Named Insured, in writing, of the right to continue coverage with us, or
    - (b) We have informed the first Named Insured, in writing, of the right to continue coverage with us and the first Named Insured has agreed, in writing, to the cancellation or nonrenewal based on the termination of the first Named Insured's appointed agent.
  - (14) Any other reasons in accordance with our underwriting guidelines for cancellation of commercial lines coverage.
- b. If we cancel this policy based on Paragraphs 7.a.(1) or (2) above, we will mail or deliver a written notice, to the first Named Insured and any person entitled to notice under this policy, at least 10 days before the effective date of cancellation. If we cancel this policy for any other reason listed above, we will mail or deliver a written notice to the first Named Insured and any person entitled to notice under this policy, not more than 120 days nor less than 30 days before the effective date of such cancellation.
- c. In the notice of cancellation which is sent to the first Named Insured, we will state the reason for cancellation. For cancellation due to the nonpayment of premium, the notice will state the effect of nonpayment by the due date. Cancellation for nonpayment of premium will not be effective if payment of the amount due is made before the effective date set forth in the notice.
- d. Notice will be sent to the last mailing addresses known to us, by:
- (1) Certified mail; or
  - (2) First class mail, if we have obtained from the post office a date stamped proof of mailing showing names and addresses.
- e. We need not send notice of cancellation if you have:
- (1) Replaced coverage elsewhere; or
  - (2) Specifically requested termination.



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D. The following is added and supersedes any other provision to the contrary;

**NONRENEWAL.**

1. We may elect not to renew this policy for any reason permitted to cancel it. If we elect not to renew this policy, we will mail a notice of nonrenewal, stating the reasons for nonrenewal, to the first Named Insured at least 30 days but not more than 120 days before the expiration date of this policy. If this policy does not have a fixed expiration date, it shall be deemed to expire annually on the anniversary of its inception.
2. This notice will be sent to the first Named insured at the last mailing address known to us by:
  - a. Certified mail; or
  - b. First class mail, if we have obtained from the post office a date stamped proof of mailing showing the first Named Insured's name and address.
3. We need not mail or deliver this notice if you have:
  - a. Replaced coverage elsewhere; or
  - b. Specifically requested termination.

# **COMMERCIAL GENERAL LIABILITY COVERAGE PART DECLARATIONS**

Policy No. ACC 080062

Effective Date: 06/14/1999 12:01 A.M., Standard Time

## **LIMITS OF INSURANCE**

General Aggregate Limit (Other Than Products / Completed Operations)	\$ 1,000,000	
Products / Completed Operations Aggregate Limit	\$ 500,000	
Personal and Advertising Injury Limit	\$ 500,000	
Each Occurrence Limit	\$ 500,000	
Fire Damage Limit	\$ 50,000	Any One Fire
Medical Expense Limit	\$ 1,000	Any One Person

## **RETROACTIVE DATE (CG 0002 only)**

Coverage A of this insurance does not apply to "bodily injury" or "property damage" which occurs before the Retroactive Date, if any, shown here:

(Enter Date or "None" if no Retroactive Date applies)

## **BUSINESS DESCRIPTION AND LOCATION OF PREMISES**

Form of Business:

☒ Individual ☐ Joint Venture ☐ Partnership ☐ Organization (other than Partnership or Joint Venture)

Business Description \*: RESTAURANT

Location of All Premises You Own, Rent or Occupy:

1. 70 ADAMS STREET #4, NEWARK, NJ 07105

2.

3.

## **PREMIUM**

Code No.	Classification Description	Type	Premium Basis	Rate Prem/Op	Pr/Co	Advance Premium Prem/Op	Pr/Co
16816	REST-LESS 75% ALCOHOL-NO DANCING-W/CKG	s	90,000	14.525	.761	1,307	443

Total Advance Premium \$ 1,307 \$ 443

## **FORMS AND ENDORSEMENTS (other than applicable Forms and Endorsements shown elsewhere in the policy)**

Forms and Endorsements applying to this Coverage Part and made part of this policy at time of issue:

L026 03-1997, L031 03-1997, L054 03-1997, L069 03-1997, L123 03-1997, L124 03-1997, L125 03-1997, L126 03-1997, L130 03-1997, L140 12-1998, CG0001 07-1998, CG2147 07-1998, CG2149 07-1998, CG2160 09-1998, CG2407 01-1996

CG2620(10/93)

\* Information omitted if shown elsewhere in the policy.

CL150 (06/1993) THESE DECLARATIONS ARE PART OF THE POLICY DECLARATIONS CONTAINING THE NAME OF THE INSURED AND THE POLICY PERIOD. Includes copyrighted material of Insurance Services Office, Inc., with its permission, Copyright, Insurance Services Office, Inc., 1983, 1984

TS 000276

COMMERCIAL GENERAL LIABILITY  
L026 (03/1997)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**NOTICE TO POLICYHOLDERS**

This insurance does not provide coverage as required by Environmental Protection Agency (EPA) 40 CFR Parts 280 and 281 for underground storage tanks nor any coverage under CERCLA or similar State or Federal Environmental Act(s).

This policy excludes all Coverage for Pollution.

All other Terms and Conditions of this Policy remain unchanged.

L026 (03/1997)

TS 000277

COMMERCIAL GENERAL LIABILITY  
L031 (03/1997)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXCLUSION - PUNITIVE OR EXEMPLARY DAMAGES**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

The following exclusion is added to COVERAGES A and B:

This insurance does not apply to a claim of or indemnification for punitive or exemplary damages. If a suit shall have been brought against you for a claim within the coverage provided under the policy, seeking both compensatory and punitive or exemplary damages, then we will afford a defense for such action. We shall not have an obligation to pay for any costs, interest or damages attributable to punitive or exemplary damages.

All other Terms and Conditions of this Policy remain unchanged.

L031 (03/1997)

TS 000278

COMMERCIAL GENERAL LIABILITY  
L054 (03/1997)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

**EXCLUSION - VOLUNTARY LABOR**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

The following exclusion is added to COVERAGES A, B and C (Section I):

This insurance does not apply to "bodily injury", "personal injury" or medical payments to any member, associate, affiliated member, or to any person or persons loaned to or volunteering services to you, whether or not paid by you, arising out of or in the course of work performed for you or on your behalf.

All other Terms and Conditions of this Policy remain unchanged.

L054 (03/1997)

TS 000279

COMMERCIAL GENERAL LIABILITY  
L069 (03/1997)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**LIMITATION - OTHER INSURANCE**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

CONDITION 4. . Other Insurance, under COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV), item b(3)  
providing Excess Insurance if the loss arises out of the maintenance or use of aircraft, "autos" or watercraft is deleted

All other Terms and Conditions of this Policy remain unchanged.

L069 (03/1997)

TS 000280

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXCLUSION - ASSAULT AND BATTERY - HIRING / SUPERVISION (NJ ONLY)**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

The following exclusion is added to Paragraph w., Exclusions of COVERAGE A, Bodily Injury and Property Damage Liability (Section I - Coverage):

The insurance does not apply to "bodily injury" or "property damage" arising out of any alleged assault and battery or out of any act or omission in connection with the prevention or suppression of such acts, including the alleged failure to provide adequate security whether caused by or at the instigation or direction of the insured, his employees, patrons or any other person.

This insurance does not apply to claims, accusations, or charges of negligent hiring, placement, training or supervision arising from actual or alleged assault or battery.

The following exclusion is added to Paragraph 2., Exclusions of COVERAGE B, Personal and Advertising Injury Liability (Section I - Coverages):

This insurance does not apply to "personal injury" arising out of any alleged assault and battery or out of any act or omission in connection with the prevention or suppression of such acts, including the alleged failure to provide adequate security whether caused by or at the instigation or direction of the insured, his employees, patrons or any other person.

All other Terms and Conditions of this Policy remain unchanged.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXCLUSION - TOTAL LIQUOR LIABILITY (NJ ONLY)**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

Exclusion c. under paragraph 2., Exclusions of COVERAGE A, Bodily Injury and Property Damage (Section I - Coverages) is replaced by the following:

**c. Liquor Liability**

"Bodily injury" or "property damage" for which any insured or his indemnitee may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

All other Terms and Conditions of this Policy remain unchanged.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**CONTRACTUAL LIABILITY LIMITATION (NJ Only)**  
(Limited Form)

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

The definitions of "insured contract" in DEFINITIONS (Section V) is replaced by the following:

"Insured Contract" means any written:

- a. Contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. Sidetrack agreement;
- c. Easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. Obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. Elevator maintenance agreement; or
- f. That part of any other contract or agreement pertaining to your business (including indemnification of a municipality in connection with work performed for a municipality) under which you assume tort liability of another party to pay for "bodily injury" or "property damage" to a third party or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

An "insured contract" does not include that part of any contract or agreement:

- (1) That indemnifies any person or organization for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, track, road-bed, tunnel, underpass or crossing;
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
  - (a) Preparing, approving or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or
  - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;
- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection or engineering services;
- (4) That indemnifies any person or organization for "property damage" to premises rented or loaned to you;
- (5) That indemnifies any person or organization for "bodily injury" or "property damage" arising from an "occurrence" caused by the negligence of said person or organization; or
- (6) That indemnifies any person or organization for "bodily injury" or "property damage" arising from the ownership, maintenance or use of any aircraft.

All other Terms and Conditions of this Policy remain unchanged.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**AMENDMENT OF PREMIUM CONDITIONS (NJ Only)**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

CONDITION 5. Premium Audit, under COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV), is replaced by the following:

**5. Premium Audit**

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.

The deposit premium shown on the declarations was computed based on rates in effect at the time the policy was issued. On each renewal, continuation, or anniversary of the effective date of this policy, we will compute the premium in accordance with our rates and rules then in effect.

The rates for each classification shown on the Declarations are multiplied by the estimated premium bases of that classification for the term to determine the deposit premium. We may, at our discretion, conduct an audit of the insured's books to determine the actual premium bases developed during the policy period. The premium bases used are payroll, admissions, gross sales, total costs, area, each exposure unit or units and are defined in accordance with company rules and the following additional definitions:

- (1) Payroll (premium basis symbol p): Remuneration paid to employees, including but not limited to:

- (a) Money or substitutes for money; commissions; bonuses; overtime; payments to statutory insurance or pension plans; profit sharing or incentive plans; pay for holidays, vacation or sickness; and fees paid to employment agencies for temporary personnel provided to the insured.
- (b) If your operations consist of a number of separate operations classified individually on the Declarations page, the payroll will be allocated to each classification where you have maintained records for each separate operation. Any such operation for which separate records are not maintained by you shall be assigned to the highest rated classification.
- (c) For premium computation purposes, the payroll of executive officers, individual insureds and co-partners is subject to a minimum annual payroll per person of:

\$

(If no entry is made, the minimum payroll as established by the company's rating rules will apply).

The rates apply per \$1,000 of Payroll.

- (2) Admissions (premium basis symbol m): The total number of persons, other than employees of the named insured, admitted to the event insured or to events conducted on the premises whether on paid admissions, tickets, complimentary tickets or passes.

The rates apply per 1,000 Admissions.

- (3) Gross sales (premium basis symbol s): The gross amount charged by the named insured, concessionaires of the named insured or by others trading under the insured's name for:

- (a) All goods or products, sold or distributed;
- (b) Operations performed during the policy period; and
- (c) Rentals; or
- (d) Dues or fees.

The rates apply per \$1,000 of Gross Sales.

- (4) Total Cost (premium basis symbol c): The total cost of all work let or sublet in connection with each specific project including:
- (a) The cost of all labor, materials and equipment furnished, used or delivered for use in the execution of the work; or
  - (b) All fees, bonuses or commissions made, paid or due.
- The rates apply per \$1,000 of Total Cost.
- (5) Area (premium basis symbol a): The total number of square feet of floor space at the insured premises.  
The rates apply per 1,000 square feet of area.
- (6) Each (premium basis symbol t): This basis of premium involves units of exposure, and the quantity comprising each unit of exposure is indicated in the declarations page, such as "per person".  
The rates apply per each unit of exposure.
- (7) Units (premium basis symbol u): A single room or group of rooms intended for occupancy as separate living quarters by a family, by a group of unrelated persons living together, or by a person living alone.  
The rates apply per unit.
- b. Premium shown in this Coverage Part is the deposit premium. At the close of each audit period (or part thereof terminating with the end of the policy period) we will compute the earned premium for that period. If the earned premium is greater than the deposit premium paid, an audit premium is due. Audit premiums are due and payable on notice to the first Named Insured. If the total earned premium for the policy period is less than the deposit premium, the difference is refunded subject to the minimum premium.
- c. The first Named Insured must keep records of information we need for premium computation, and shall supply copies at such times as we may request.
- d. We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

All other Terms and Conditions of this Policy remain unchanged.

POLICY NUMBER: ACC 080062

COMMERCIAL GENERAL LIABILITY  
L130 (03/1997)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

### DEDUCTIBLE LIABILITY INSURANCE (NJ Only)

This endorsement modifies insurance provided under the following:

#### COMMERCIAL GENERAL LIABILITY COVERAGE PART

#### SCHEDULE

Coverage	Amount of Deductible
Bodily Injury Liability	\$ 500 per claim
Property Damage Liability	\$ 500 per claim

APPLICATION OF ENDORSEMENT (Enter below any limitations on the application of this endorsement. If no limitation is entered, the deductibles apply to damages for all "bodily injury" and "property damage", however caused).

1. Our obligation under the Bodily Injury Liability and Property Damage Liability Coverages to pay damages on your behalf applies only to the amount of damages in excess of any deductible amounts stated in the schedule as applicable to such coverages, and the limits of insurance applicable to each "occurrence" for such coverages will be reduced by the amount of such deductible. "Aggregate" limits for such coverages shall not be reduced by the application of such deductible.
2. The deductible amounts stated are on a PER CLAIM BASIS and the deductible amount applies:
  - a. Under the Bodily Injury Liability, to all damages because of "bodily injury" sustained by one person; or
  - b. Under the Property Damage Liability, to all damages because of "property damage" sustained by one person or organization;as a result of any one "occurrence".
3. The terms of this insurance, including those with respect to:
  - a. Our right and duty to defend "suits" seeking those damages; and
  - b. Your duties in the event of an "occurrence", claim or "suit",apply irrespective of the application of the deductible amount.
4. We may at our sole election and option, either:
  - a. Pay any part or all of the deductible amount to effect settlement of any claim or "suit" and upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us; or
  - b. Upon our receipt of notice of any claim or at any time thereafter, request you to pay over and deposit with us all or any part of the deductible amount, to be held and applied per the terms of this policy.

All other Terms and Conditions of this Policy remain unchanged.

L130 (03/1997)

TS 000286

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXCLUSION - LEAD CONTAMINATION**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

This endorsement excludes "occurrences" at or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured; or from the operations of the insured, which result in:

- a. "Bodily Injury" arising out of the ingestion, inhalation or absorption of lead in any form;
- b. "Property Damage" arising from any form of lead;
- c. "Personal Injury" arising from any form of lead;
- d. "Advertising Injury" arising from any form of lead;
- e. "Medical Payments" arising from any form of lead;
- f. Any loss, cost or expense arising out of any request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of lead; or
- g. Any loss, cost or expense arising out of any claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of lead.

All other Terms and Conditions of the Policy remain unchanged.

## COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II - Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V - Definitions.

### SECTION I - COVERAGES

#### COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

##### 1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III - Limits Of Insurance, and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverage A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments - Coverages A and B.

- b. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory"; and
- (2) The "bodily injury" or "property damage" occurs during the policy period.

- c. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

##### 2. Exclusions

This insurance does not apply to:

##### a. Expected or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

##### b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
  - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
  - (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

##### c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
  - (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
  - (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.
- This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

d. **Workers' Compensation And Similar Laws**

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. **Employer's Liability**

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
  - (a) Employment by the insured; or
  - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

f. **Pollution**

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":
  - (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured; However, this subparagraph does not apply to:
    - (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot from equipment used to heat that building;
    - (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
    - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
  - (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
  - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for any insured or any person or organization for whom you may be legally responsible; or
  - (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
    - (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
    - (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor, or

(iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".

(e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".

(2) Any loss, cost or expense arising out of any:

(a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or

(b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

g. **Aircraft, Auto Or Watercraft**

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion does not apply to:

(1) A watercraft while ashore on premises you own or rent;

(2) A watercraft you do not own that is:

(a) Less than 26 feet long; and

(b) Not being used to carry persons or property for a charge;

(3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;

(4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or

(5) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in paragraph f.(2) or f.(3) of the definition of "mobile equipment".

h. **Mobile Equipment**

"Bodily injury" or "property damage" arising out of:

(1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or

(2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

i. **War**

"Bodily injury" or "property damage" due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution. This exclusion applies only to liability assumed under a contract or agreement.

j. **Damage To Property**

"Property damage" to:

(1) Property you own, rent, or occupy;

(2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;

(3) Property loaned to you;

(4) Personal property in the care, custody or control of the insured;

(5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or



(6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III - Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraph (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

k. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

l. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

m. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

n. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

o. Personal And Advertising Injury

"Bodily injury" arising out of "personal and advertising injury".

Exclusions c. through n. do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section III - Limits Of Insurance.

#### COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY

##### 1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III - Limits Of Insurance; and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments - Coverages A And B.

b. This insurance applies to:

"personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

## 2. Exclusions

This insurance does not apply to:

a. "Personal and advertising injury":

- (1) Caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury";
- (2) Arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity;
- (3) Arising out of oral or written publication of material whose first publication took place before the beginning of the policy period;
- (4) Arising out of a criminal act committed by or at the direction of any insured;
- (5) For which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement;
- (6) Arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement";
- (7) Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement";
- (8) Arising out of the wrong description of the price of goods, products or services stated in your "advertisement";
- (9) Committed by an insured whose business is advertising, broadcasting, publishing or telecasting. However, this exclusion does not apply to Paragraphs 14.a., b. and c. of "personal and advertising injury" under the Definitions Section; or
- (10) Arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

b. Any loss, cost or expense arising out of any:

- (1) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants"; or
- (2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of "pollutants".

## COVERAGE C MEDICAL PAYMENTS

### t. Insuring Agreement

a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

- (1) On premises you own or rent;
- (2) On ways next to premises you own or rent; or
- (3) Because of your operations;

provided that:

- (1) The accident takes place in the "coverage territory" and during the policy period;
- (2) The expenses are incurred and reported to us within one year of the date of the accident; and
- (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

## 2. Exclusions

We will not pay expenses for "bodily injury":

- a. To any insured.
- b. To a person hired to do work for or on behalf of any insured or a tenant of any insured.
- c. To a person injured on that part of premises you own or rent that the person normally occupies.
- d. To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.
- e. To a person injured while taking part in athletics.
- f. Included within the "products-completed operations hazard".
- g. Excluded under Coverage A.
- h. Due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution.

## SUPPLEMENTARY PAYMENTS - COVERAGES A AND B

1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:
  - a. All expenses we incur.
  - b. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
  - c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
  - d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
  - e. All costs taxed against the insured in the "suit".
  - f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
  - g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:
  - a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
  - b. This insurance applies to such liability assumed by the insured;
  - c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
  - d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
  - e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
  - f. The indemnitee:
    - (1) Agrees in writing to:
      - (a) Cooperate with us in the investigation, settlement or defense of the "suit";
      - (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
      - (c) Notify any other insurer whose coverage is available to the indemnitee; and
      - (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and

(2) Provides us with written authorization to:

- (a) Obtain records and other information related to the "suit", and
- (b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of paragraph 2.b.(2) of Section I - Coverage A - Bodily Injury And Property Damage Liability, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- a. We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- b. The conditions set forth above, or the terms of the agreement described in paragraph I, above, are no longer met.

## SECTION II - WHO IS AN INSURED

1. If you are designated in the Declarations as:

- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

2. Each of the following is also an insured:

- a. Your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" is an insured for:
  - (1) "Bodily injury" or "personal and advertising injury":
    - (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" while that co-"employee" is either in the course of his or her employment or while performing duties related to the conduct of your business;
    - (b) To the spouse, child, parent, brother or sister of that co-"employee" as a consequence of Paragraph (1)(a) above;
    - (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or
    - (d) Arising out of his or her providing or failing to provide professional health care services.
  - (2) "Property damage" to property:
    - (a) Owned, occupied or used by,
    - (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).
- b. Any person (other than your "employee"), or any organization while acting as your real estate manager.
- c. Any person or organization having proper temporary custody of your property if you die, but only:
  - (1) With respect to liability arising out of the maintenance or use of that property; and
  - (2) Until your legal representative has been appointed.
- d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.

3. With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:
  - a. "Bodily injury" to a co-"employee" of the person driving the equipment; or
  - b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.
4. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
  - a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
  - b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
  - c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

#### SECTION III - LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
  - a. Insureds;
  - b. Claims made or "suits" brought; or
  - c. Persons or organizations making claims or bringing "suits".
2. The General Aggregate Limit is the most we will pay for the sum of:
  - a. Medical expenses under Coverage C;
  - b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
  - c. Damages under Coverage B.
3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
4. Subject to 2. above, the Personal and Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.
5. Subject to 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
  - a. Damages under Coverage A; and
  - b. Medical expenses under Coverage C
 because of all "bodily injury" and "property damage" arising out of any one "occurrence".
6. Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.
7. Subject to 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

#### SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS

##### 1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

##### 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. If a claim is made or "suit" is brought against any insured, you must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

##### 3. Legal Action Against Us

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured obtained after an actual trial; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

##### 4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverage A or B of this Coverage Part, our obligations are limited as follows:

###### a. Primary Insurance

This insurance is primary except when b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in c. below.

###### b. Excess Insurance

This insurance is excess over:

- (1) Any of the other insurance, whether primary, excess, contingent or on any other basis:

- (a) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
- (b) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;
- (c) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or
- (d) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section I - Coverage A - Bodily Injury And Property Damage Liability.

(2) Any other primary insurance available to you covering liability for damages arising out of the premises or operations for which you have been added as an additional insured by attachment of an endorsement.

When this insurance is excess, we will have no duty under Coverages A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

(1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. **Method of Sharing**

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

5. **Premium Audit**

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period. Audit premiums are due and payable on notice to the first Named Insured. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

6. **Representations**

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

7. **Separation Of Insureds**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

8. **Transfer Of Rights Of Recovery Against Others To Us**

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

9. **When We Do Not Renew**

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

**SECTION V - DEFINITIONS**

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters.

2. "Auto" means a land motor vehicle, trailer or semi trailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".
3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
4. "Coverage territory" means:
  - a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
  - b. International waters or airspace, provided the injury or damage does not occur in the course of travel or transportation to or from any place not included in a. above; or
  - c. All parts of the world if:
    - (1) The injury or damage arises out of:
      - (a) Goods or products made or sold by you in the territory described in a. above; or
      - (b) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; and
    - (2) The insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in a. above or in a settlement we agree to.
5. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
7. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
  - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
  - b. You have failed to fulfill the terms of a contract or agreement;if such property can be restored to use by:
  - a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
  - b. Your fulfilling the terms of the contract or agreement.
9. "Insured contract" means:
  - a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
  - b. A sidetrack agreement;
  - c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
  - d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
  - e. An elevator maintenance agreement;
  - f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

    - (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
    - (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
      - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
      - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or



- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities
10. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
11. "Loading or unloading" means the handling of property:
- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
  - b. While it is in or on an aircraft, watercraft or "auto"; or
  - c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;
- but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".
12. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
  - b. Vehicles maintained for use solely on or next to premises you own or rent;
  - c. Vehicles that travel on crawler treads;
  - d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
    - (1) Power cranes, shovels, loaders, diggers or drills; or
    - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
  - e. Vehicles not described in a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
    - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
    - (2) Cherry pickers and similar devices used to raise or lower workers;
  - f. Vehicles not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.
- However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":
- (1) Equipment designed primarily for:
    - (a) Snow removal,
    - (b) Road maintenance, but not construction or resurfacing; or
    - (c) Street cleaning;
  - (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
  - (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.
13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
- a. False arrest, detention or imprisonment;
  - b. Malicious prosecution;
  - c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
  - d. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
  - e. Oral or written publication of material that violates a person's right of privacy;
  - f. The use of another's advertising idea in your "advertisement"; or

- g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".
15. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
16. "Products-completed operations hazard":
- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
- (1) Products that are still in your physical possession; or
- (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
- (a) When all of the work called for in your contract has been completed.
- (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site
- (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.
- Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.
- b. Does not include "bodily injury" or "property damage" arising out of:
- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
- (3) Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that products-completed operations are subject to the General Aggregate Limit.
17. "Property damage" means:
- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.
18. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:
- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.
19. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
20. "Your product" means:
- a. Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
- (1) You;
- (2) Others trading under your name; or
- (3) A person or organization whose business or assets you have acquired; and
- b. Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.
- "Your product" includes:
- a. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
- b. The providing of or failure to provide warnings or instructions.
- "Your product" does not include vending machines or other property rented to or located for the use of others but not sold.

---

21 "Your work" means:

- a Work or operations performed by you or on your behalf; and
- b Materials, parts or equipment furnished in connection with such work or operations.

"Your work" includes:

- a Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
- b The providing of or failure to provide warnings or instructions.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

### EMPLOYMENT-RELATED PRACTICES EXCLUSION

This endorsement modifies insurance provided under the following:

#### COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. The following exclusion is added to Paragraph 2., Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability:

This insurance does not apply to:

"Bodily injury" to:

- (1) A person arising out of any:
  - (a) Refusal to employ that person;
  - (b) Termination of that person's employment; or
  - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" to that person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

- B. The following exclusion is added to Paragraph 2., Exclusions of Section I - Coverage B - Personal And Advertising Injury Liability:

This insurance does not apply to:

"Personal and advertising injury" to:

- (1) A person arising out of any:
  - (a) Refusal to employ that person,
  - (b) Termination of that person's employment; or
  - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "personal and advertising injury" to that person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

### TOTAL POLLUTION EXCLUSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

#### COMMERCIAL GENERAL LIABILITY COVERAGE PART

Exclusion 1, under paragraph 2., Exclusions of Coverage A - Bodily Injury And Property Damage Liability (Section I - Coverages) is replaced by the following:

This insurance does not apply to:

I. Pollution

- (1) "Bodily injury" or "property damage" which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.
- (2) Any loss, cost or expense arising out of any:
  - (a) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants"; or
  - (b) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing, the effects of, "pollutants".

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXCLUSION - YEAR 2000 COMPUTER - RELATED AND  
OTHER ELECTRONIC PROBLEMS**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

The following exclusion is added to Paragraph 2., Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability and Paragraph 2., Exclusions of Section I - Coverage B - Personal And Advertising Injury Liability:

**2. Exclusions**

This insurance does not apply to "bodily injury", "property damage", "personal injury" or "advertising injury" (or "personal and advertising injury" if defined as such in your policy) arising directly or indirectly out of:

- a. Any actual or alleged failure, malfunction or inadequacy of:
  - (1) Any of the following, whether belonging to any insured or to others:
    - (a) Computer hardware, including microprocessors;
    - (b) Computer application software;
    - (c) Computer operating systems and related software;
    - (d) Computer networks;
    - (e) Microprocessors (computer chips) not part of any computer system; or
    - (f) Any other computerized or electronic equipment or components; or
  - (2) Any other products, and any services, data or functions that directly or indirectly use or rely upon, in any manner, any of the items listed in Paragraph 2.a.(1) of this endorsement due to the inability to correctly recognize, process, distinguish, interpret or accept the year 2000 and beyond.
- b. Any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement or supervision provided or done by you or for you to determine, rectify or test for, any potential or actual problems described in Paragraph 2.a. of this endorsement.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**PRODUCTS/COMPLETED OPERATIONS HAZARD REDEFINED**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART  
SCHEDULE

Description of Premises and Operations: RESTAURANT

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

With respect to "bodily injury" or "property damage" arising out of "your products" manufactured, sold, handled or distributed:

1. On, from or in connection with the use of any premises described in the Schedule, or
2. In connection with the conduct of any operation described in the Schedule, when conducted by you or on your behalf.

Paragraph a. of the definition of "Products-completed operations hazard" in the DEFINITIONS Section is replaced by the following:

"Products-completed operations hazard":

- a. Includes all "bodily injury" and "property damage" that arises out of "your products" if the "bodily injury" or "property damage" occurs after you have relinquished possession of those products.

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY

~~THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.~~

## NEW JERSEY CHANGES - LOSS INFORMATION

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART ("OCCURRENCE" VERSION)

The following Condition is added TO COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):

#### 10. Your Right to Loss Information

We will provide the first Named Insured shown in the Declarations the following loss information relating to this and any preceding general liability Coverage Part we have issued to you during the previous three years:

- a. A list or other record of each "occurrence" of which we were notified in accordance with paragraph 2.a. of the Duties in the Event of Occurrence, Offense, Claim or Suit Condition in this Section. We will include a brief description of the "occurrence" and information on whether any claim arising out of the "occurrence" is open or closed.
- b. A summary by policy year, of payments made and amounts reserved, stated separately under any applicable General Aggregate Limit and

#### Products/Completed Operations Aggregate Limit.

Amounts reserved are based on our judgment. They are subject to change and should not be regarded as ultimate settlement values.

You must not disclose this information to any claimant or any claimant's representative without our consent.

We will provide this information only if we receive a written request from the first Named Insured during the policy period. We will provide this information within 45 days of receipt of the request.

We compile claim and "occurrence" information for our own business purposes and exercise reasonable care in doing so. In providing this information to the first Named Insured, we make no representations or warranties to insureds, insurers or others to whom this information is furnished by or on behalf of any insured.


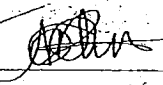


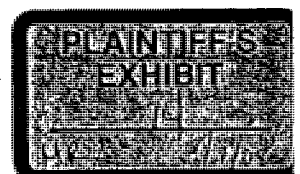
Cancellation No. 92047056

*Terra Sul Corporation v. Boi Na Brasa, Inc.*

**EXHIBIT A-14**

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<b>MIDLANTIC</b> Midlantic Bank, N.A. 84 Wilson Avenue, Newark, NJ 07105		 	
MEMO: ELECTRIC			
AC# 1120503671			
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Cancellation No. 92047056

*Terra Sul Corporation v. Boi Na Brasa, Inc.*

**EXHIBIT A-15**

Offered by Terra Sul Corporation

**Fittipaldi se recupera e já está em casa**

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**Computador da Mir volta a quebrar**

Página 4

**Maradona ameaça parar de jogar**

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# BRAZILIAN PRESS

Ano 1

17 a 23 - Setembro de 1997

Número 2

Distribuição Gratuita



## Vera Fischer

A atriz internou-se, na tarde de terça-feira, na Clínica Solar do Rio de Janeiro, um centro de recuperação para dependência química.

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## Senado aprova nova lei sobre o assédio sexual

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Senadora Benedita da Silva: A autora do projeto de lei

## Esportes:

**Brasil é semi-finalista no Mundial Sub-17**

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**Brasil é campeão mundial de vôlei de praia**

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## Locais:

**Ameaçada a construção do estádio no Ironbound**

Página 11

**Remédios para emagrecer são banidos do mercado**

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PLAINTIFF'S  
EXHIBIT

11/1/97



# Falta o óleo

Pastor Darcy Calres Jr

Certa vez, deixei meu carro emprestado com um colega que estava em dificuldades, a única responsabilidade dele era checar sempre o óleo. Passados vários dias, o carro foi devolvido. Observando o óleo, notei que quase não havia nenhum! O carro sobreviveu, mas quem sabe, você conhece alguém que por um simples descuido, uma falta de óleo por algumas milhas, teve um grande prejuízo com o motor?

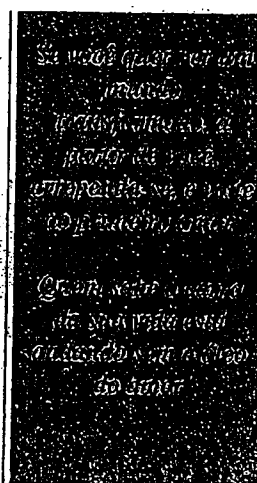
Nos últimos dias estava refletindo sobre uma cidade do Novo Testamento chamada Éfeso. O apóstolo Paulo visitou este local, anunciou o "gospel", o evangelho, as boas novas da salvação e deixou um casal chamado Áquila e Priscila na cidade. Eles encontraram um homem chamado Apolo, pregador, "tomaram-no consigo e, com mais exatidão, lhe expuseram o caminho de Deus", imitando-o a percorrer outras áreas com essa mensagem!

Anos depois, Paulo volta a Éfeso e diariamente começa a falar às pessoas a respeito do grande amor de Deus, e

de Seu Filho, Jesus Cristo. Ele mostra princípios básicos de vida, atenciona doentes, liberta pessoas dominadas por demônios, enfim, anuncia toda a vontade de Deus para os moradores e visitantes daquela cidade, por um período de mais de dois anos. Isto aconteceu provavelmente por volta dos anos 60 do calendário cristão.

Como Paulo tinha um espírito desbravador e grandes alyos no seu ministério pastoral e missionário, ele resolveu partir. Marcou uma reunião com seus líderes que é descrita de maneira calorosa no Livro dos Atos dos Apóstolos, capítulo 20. Conseguimos ver um real amor, um compromisso de amizade sincera, por parte deste grande líder.

Neste encontro ele lembra aqueles presbíteros do seu caráter e que mesmo em meio a angústias, tribulações, lágrimas e até ciladas, nunca deixou de anunciar o caminho da salvação. Paulo concluiu o Deus Todo Poderoso, e as circunstâncias difíceis não eram motivo para que ele deixasse de acreditar de dizer a



mensagem que Deus havia dado a ele. Ele mostra que havia ensinado o povo usando métodos diferentes de abordar pessoas, tanto publicamente como de casa em casa. Ele destaca o fato que não fazia acepção de pessoas, isto é, todas eram importantes para ele, independente de quem eram!

Algo fantástico é que a mensagem era sempre cristalina: o "arrependimento para com Deus é a fé em nosso Senhor Jesus Cristo".

Neste mesmo encontro ele disse aos pastores e bispos que o Espírito Santo os havia constituído, para que cuidassem da igreja de Deus que Jesus Cristo havia comprado com o seu próprio sangue! Paulo alertou ainda, que depois da sua partida lobos entrariam no rebanho, falando coisas perversas, tentando enganar os irmãos.

Depois deste encontro, muitos anos se passaram, 30 ou 40 anos! E no livro do Apocalipse, mais uma vez, a Igreja da cidade de Éfeso é lembrada por Jesus Cristo. No capítulo 2, ele faz vários elogios, pois o povo permaneceu firme nas doutrinas bíblicas mesmo com perseguições, angústias e crises. Jesus, porém, afirma que tinha algo contra aqueles cristãos de Éfeso! "Tenho, porém, contra ti que abandonaste o teu primeiro amor". Estava faltando o óleo do amor! A singeleza dos primeiros dias, aquele calor gostoso, aquela vontade de viver, de trabalhar, de cantar. Nos faz lembrar da força da paixão, que se não for transformada em amor, logo desaparece... Faltava aquele prazer de ser um discípulo do Mestre, de atuar

nas atividades da igreja com uma sinceridade agradável, descontraída, cheia de satisfação!

"Agora, pois, permaneçam a fé, a esperança e o amor, estes três: porém o maior destes é o amor". "E ainda que eu distribua todos os meus bens entre os pobres, e ainda que entregue meu corpo para ser queimado, se não tiver amor, nada disso me aproveitará" (1Cor 13). As vezes vivemos no dia a dia apenas sobrevivendo! Vamos, a partir de hoje, ter um novo parâmetro para nossas vidas!

Jesus foi direto ao ponto que carecia de transformação! Como anda o seu interior? Como vai o seu "amor"? Não estamos falando agora do amor na amizade, no amor sexual no casamento, no amor de preservar nossas vidas; estamos falando da essência do amor, do amor verdadeiro, o amor incondicional, o amor que não busca interesses, o amor que busca o melhor do próximo, o amor que é transbordante mesmo sem receber o retorno!

Só possui este amor quem primeiramente foi impactado com esse mesmo tipo de amor. A Bíblia afirma que nós amamos, pois Deus nos amou primeiro! O desafio é que a partir de hoje, nossos atos sejam feitos com amor!

Os Dez Mandamentos podem ser resumidos em amar a Deus sobre todas as coisas e ao nosso próximo como a nós mesmos! Vamos revolucionar este mundo! Busque a Deus de todo seu coração, ame sua família, esposa, marido, filhos, dê prioridade para eles, ame seus pais! Ame sua igreja, seus pastores, líderes, irmãos na fé. Ame seus vizinhos e companheiros de trabalho. Ame o seu país. É o país no qual você vive! Ame até seus inimigos! Faça isso, não de maneira simplista, mas seguindo os princípios e estilo de vida do nosso Mestre e Senhor Jesus Cristo! Se você quer ver um mundo transformado, a partir de você, arrependa-se, e volte ao primeiro amor. Quem sabe o carro da sua vida está andando sem o óleo do amor, e hoje é o dia da restauração, hoje é o dia do arrependimento! Jesus disse: "Vinde a mim todos os que estais cansados e sobrecarregados, e eu vos aliviarei". Mai 11:28.

Rev. Darcy Calres, Jr.  
Pastor da Comunidade Cristã  
Presbiteriana em Mineola - NY

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**Classificados:**  
Empregos, Aluguéis,  
Compra, Venda, Etc

Páginas 48 & 49

**Sem-terra ameaçam invadir  
fazenda de FHC**

Manifestantes exigem que o Incra libere R\$ 3 milhões

Página 10

**Grátis**

# BRAZILIAN PRESS

Ano 3

Quarta-feira - 17 de Novembro de 1999

Número 163

## BAUA: MOMENTO DE DECISÃO



Evandro Saramago atual  
Presidente da BAUA.

*Presidente da associação diz que falta  
apoio da comunidade*

*Nenhum candidato inscrito às  
vésperas das eleições*

*O que pensa a comunidade sobre a  
associação*

Páginas 24 e 25

**Pai desesperado busca  
tratamento para o  
filho nos E.U.A.**

Página 16



Vitor de 5 anos sofre de  
Cerebral Palsy

## ESPORTES

FLAMENGO CONFIRMA SAÍDA DE  
ROMÁRIO

ATLÉTICO VENCE E CRUZEIRO RECLAMA  
DA ARBITRAGEM

GUGA PODE SER O 4º TENISTA DO MUNDO

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## LOCAIS

DIRETOR DE ESCOLA BRASILEIRA  
BRILHA NO PROGRAMA CRISTINA

ATIVISTA POLÍTICA BRASILEIRA É  
HOMENAGEADA POR JORNAL HISPANO

EMANUELA LIMA MOSTRA FINA ARTE  
NA ONU

Páginas 10 a 38

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Voto online será testado em 2000 nos EUA.

A próxima eleição presidencial nos EUA, no ano 2000, testará o uso da Internet para votação política. Em dois estados americanos, Arizona e Idaho, o Partido Democrata usará a rede para eleições primárias. Também o governo dos EUA permitirá o voto online de 350 militares em serviço fora do país.

A notícia é da Reuters.

As vantagens dos votos via Internet é a rapidez da apuração, a comodidade para os eleitores e o aumento da participação popular num país onde votar não é obrigação. As desvantagens apontadas pelos críticos recaem sobre a segurança. Hackers poderiam alterar o resultado de uma eleição ou, no mínimo, saber

quem está votando em quem, quebrando assim a privacidade do voto.

#### Novo Lançamento

A empresa americana General Motors lançou seu primeiro carro equipado com Internet, que o motorista poderá consultar sem perigo graças a um programa que reconhece a voz. Os usuários terão acesso à atualidade, aos resultados esportivos, à bolsa e ao correio eletrônico graças a uma conexão móvel.

Não há telas nem nenhum elemento que possa distrair a atenção do motorista, frisou a GM em um comunicado publicado em Las Vegas (Nevada). O sistema, apresentado em um Cadillac Seville modelo 2000, se aproveita do já existente computador para carros Onstar, da GM. Onstar conta com cerca de 100.000

assinantes e serão fabricados anualmente mais de um milhão de veículos equipados com este sistema.

A GM prevê desenvolver os serviços Internet disponíveis em seus carros, como por exemplo a possibilidade de ouvir música graças à tecnologia MP3, ou ouvir rádio com uma conexão de satélite.

[www.dialdata.com.br/lucianascotti](http://www.dialdata.com.br/lucianascotti). Não deixe de visitar o site e ler os livros de Luciana Scotti, uma gafota que, aos 22 anos, sofreu um acidente vascular cerebral (AVC). Como consequência, perdeu a voz e tornou-se tetraplégica.

Não por acaso, a vida lhe conservou o movimento de um dedo na mão esquerda, com o qual ela se comunica com o mundo. Uma excelente oportunidade para o leitor entender que o importante no ser humano não é o 'lay-out', mas o infinito potencial de sua alma.

#### Mopitor Dobrável.

Pesquisadores da IBM anunciaram esta semana a criação de um transistor flexível que poderá ser utilizado para a criação de equipamentos flexíveis, como uma tela de computador que pode ser enrolada ou um jornal eletrônico.

A tecnologia é de baixo custo e

utiliza finas camadas de material depositadas em plástico.

[www.noitescariocas.com.br](http://www.noitescariocas.com.br). Não há muitos lugares no mundo tão bons para se divertir como o Rio de Janeiro. Também não há melhor fonte de informação no mundo que a Internet.

Pois, então: antes de meter o pé na jaca, consulte o Noitescariocas.com.br.

Tem sugestões de restaurantes, bares, pizzarias, cyber bares, livrarias, quiosques, etc e tal.

#### WWW:

- 1) Sociedade Esportiva Palmeiras: [www.palmeiras.com.br](http://www.palmeiras.com.br)
- 2) Santos F. C.: [www.lbm.com.br/santosfc](http://www.lbm.com.br/santosfc)
- 3) Esporte Clube Vitória: [www.ecvitoria.com.br](http://www.ecvitoria.com.br)
- 4) Santa Cruz Futebol Club: [www.santacruz.esp.br](http://www.santacruz.esp.br) ou [www2.netpe.com.br/users/corinthians.html](http://www2.netpe.com.br/users/corinthians.html)
- 5) Atlético: [www.atletico.com.br](http://www.atletico.com.br)
- 6) Cruzeiro: [www.cruzeiro.com.br](http://www.cruzeiro.com.br)
- 7) Flamengo: [www.flamengo.com.br](http://www.flamengo.com.br)
- 8) Botafogo: [www.botafogo.com.br](http://www.botafogo.com.br)
- 9) [www.digital10.cjb.net](http://www.digital10.cjb.net)
- 10) [www.rededenegocios.inf.br](http://www.rededenegocios.inf.br)
- 11) [www.tre.rj.gov.br](http://www.tre.rj.gov.br)
- 12) [www.fly2k.dot.gov](http://www.fly2k.dot.gov)
- 13) [www.receita.fazenda.gov.br/](http://www.receita.fazenda.gov.br/)
- 14) [www.hungersite.com](http://www.hungersite.com)



**O Sabor Verdadeiro do melhor Churrasco Brasileiro**

**Expresso Boi na Brasa**

**(973) 589-6069**

**O mais rápido deliver de:**  
Newark - Harrison - Kearny

**70 Adams St - Loja 4 \* Newark - N.J.**

**COISA NOSSA**

**Este nome você já conhece!!!**

**70 Adams Street - loja 9 - Newark, NJ**

**Tel - (973) 578-2675**

**Fax - (973) 578-2090**

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**O BRASIL EM SUAS MÃOS**



COMMERCIAL GENERAL LIABILITY COVERAGE PART  
DECLARATIONS  
COLONIA INSURANCE COMPANY

090-1

NEW  
Renewal of Number\*

BROKER COPY

Policy No. CGL903206A

Named Insured and Mailing Address (No., Street, Town or City, County, State, Zip Code)

CHURRASCARIA BOI NA BRASA  
70 ADAMS STREET  
NEWARK NJ 07105

ASSOCIATED INSURANCE MANAGEMENT CORP.

ONE SEAPORT PLAZA  
199 WATER STREET  
NEW YORK, N.Y. 10038

Policy Period: From 05/09/96 to 05/09/97 at 12:01 A.M. Standard Time at your mailing address shown above.

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

LIMITS OF INSURANCE	
General Aggregate Limit (Other Than Products-Completed Operations)	\$ 1,000,000.
Products-Completed Operations Aggregate Limit	\$ 500,000.
Personal and Advertising Injury Limit	\$ 500,000.
Each Occurrence Limit	\$ 500,000.
Fire Damage Limit	\$ 50,000. Any One Fire
Medical Expense Limit	\$ 5,000. Any One Person

RETROACTIVE DATE (CG 00 02 only)

Coverage A of this Insurance does not apply to "bodily injury" or "property damage" which occurs before the Retroactive Date, if any, shown here: NONE

(Enter Date or "none" if no Retroactive Date applies)

DESCRIPTION OF BUSINESS AND LOCATION OF PREMISES

Form of Business:

☒ Individual ☐ Joint Venture ☐ Partnership ☐ Organization (Other than Partnership or Joint Venture)

Business Description\*: RESTAURANT

Location of All Premises You Own, Rent or Occupy:

70 ADAMS STREET  
NEWARK NJ 07105

PREMIUM

Classification	Code No.	Premium Basis	Rate		Advance Premium	
			Pr/Co	All Other	Pr/Co	All Other
01 RESTAURANTS - WITH SALES OF ALCOHOLIC BEVERAGAES THAT ARE LESS THAN 75% OF THE TOTAL ANNUAL RECEIPTS OF THE RESTAURANTS - WITHOUT DANCE FLOOR						
	16816	s)	50000	1.073 17.228	107.	861.
Total Advance Premium \$						968.
Premium shown is payable: \$ 968. at inception; \$ 1st Anniversary; \$ 2nd Anniversary						

FORMS AND ENDORSEMENTS

Forms and Endorsements applying to this Coverage Part and made part of this policy at time of issue†:

SEE FORM GU207 - COMMERCIAL GENERAL LIABILITY FORMS LIST

Countersigned\*: CLIFFSIDE PARK NJ

\*Entry optional if shown in Common Policy Declarations.

†Forms and Endorsements applicable to this Coverage Part omitted if shown elsewhere in the policy.

By

Authorized Representative

THESE DECLARATIONS TOGETHER WITH THE COMMON POLICY CONDITIONS, COVERAGE PART DECLARATIONS, COVERAGE PART COVERAGE FORMS AND FORMS AND ENDORSEMENTS, IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETE THE ABOVE NUMBERED POLICY.

Cancellation No. 92047056

*Terra Sul Corporation v. Boi Na Brasa, Inc.*

**EXHIBIT A-16**

Offered by Terra Sul Corporation

HOLD HARMLESS AND INDEMNITY AGREEMENT

IT IS HEREBY AGREED BY AND BETWEEN THE TRUMP TAJ MAHAL CASINO RESORT,  
1000 Boardwalk At Virginia Avenue, in the County of Atlantic state of  
New Jersey,

and

CHURRASCHARIA BOI NA BRASA, the Vendor/Processor, whose address is  
70 Adam Street, in the County of Essex in the state of New Jersey,  
that:

CHURRASCHIA BOI NA BRASA hereby agrees to indemnify and save  
harmless THE TRUMP TAJ MAHAL CASINO RESORT from and against  
any and all losses, liabilities, costs, expenses, libels,  
suits, actions, claims and other obligations and proceedings  
whatsoever, including, without limitation, all judgments  
rendered against, and fines or penalties imposed upon THE  
TRUMP TAJ MAHAL CASINO RESORT and any reasonable attorney's  
fees and other expenses, incurred in connection therewith,  
which, directly or indirectly, may be payable, caused by,  
attributable to, arise by virtue of, or result from actual or  
alleged (i) consumption or use of any food or grocery product  
sold or distributed to or through indemnitee which was  
prepared and distributed by CHURRASCHARIA BOI NA BRASA  
(ii) breach of any guaranty, specification or warranty, express  
or implied, as to the quality or kind of any such product,  
related to raw materials, manufacture, production processing,  
packaging, packing, sealing, storage or delivery.

Date: JUNE 7TH 1996

[Signature]  
CHURRASCHARIA BOI NA BRASA

Witness: [Signature]

[Signature]  
TRUMP TAJ MAHAL CASINO RESORT



Cancellation No. 92047056

*Terra Sul Corporation v. Boi Na Brasa, Inc.*

**EXHIBIT A-17**

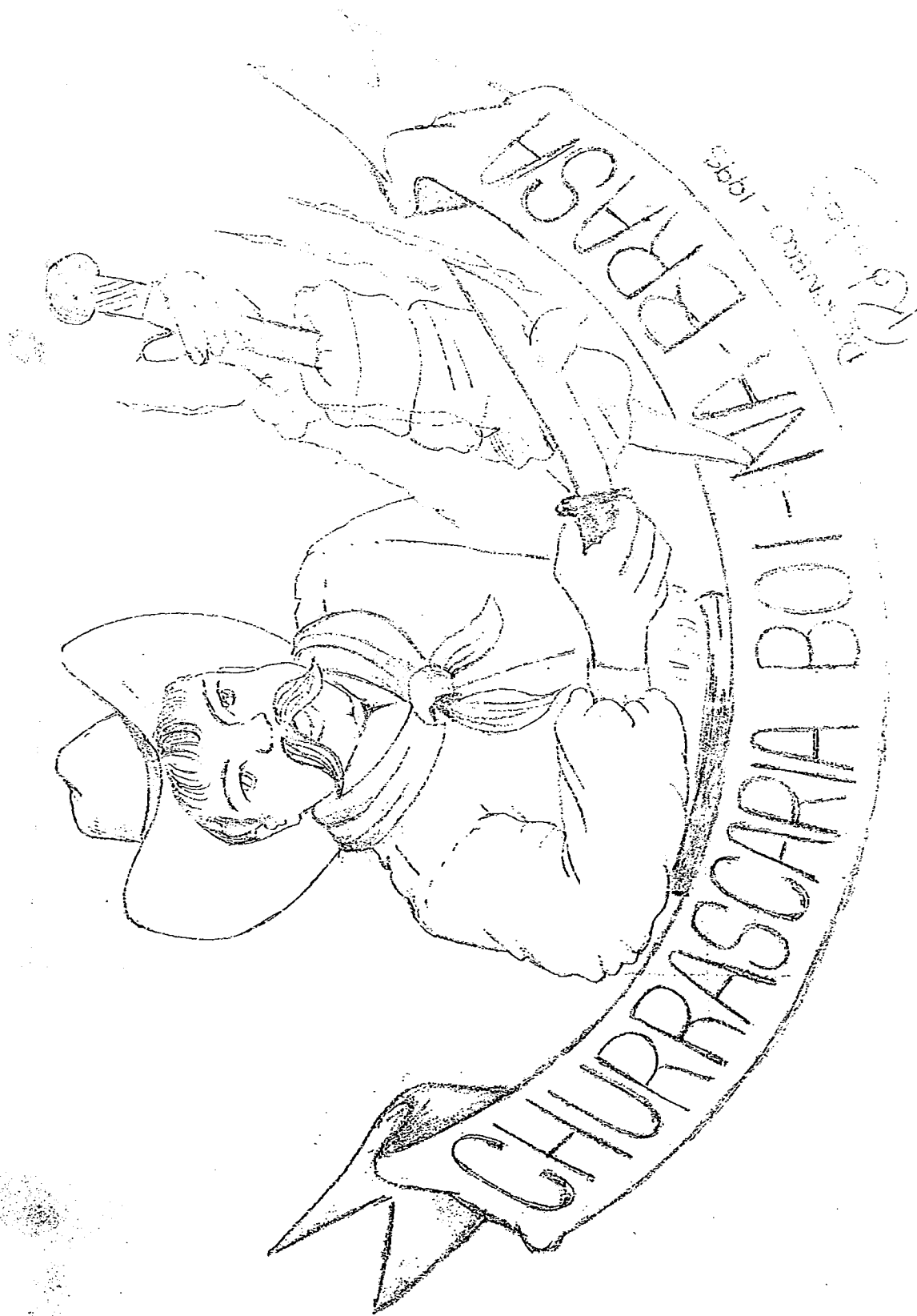
Offered by Terra Sul Corporation

Unsubstantiated



TS 000009

SANTO  
ANGELO  
LC 702



Cancellation No. 92047056

*Terra Sul Corporation v. Boi Na Brasa, Inc.*

**EXHIBIT A-18**

Offered by Terra Sul Corporation



EXHIBIT  
P-2



New Jersey Department of State  
Division of Commercial Recording  
Certificate of Incorporation, Profit  
(Title 14A:2-7 New Jersey Business Corporation Act  
For Use by Domestic Profit Corporations)

FILED

JAN 19 1999

James A. DiMonte, Jr.  
State Treasurer

This is to Certify that, there is hereby organized a corporation under and by virtue of the above noted statute of the New Jersey Statutes.

1. Name of Corporation: TERRA SUL CORP.
2. The purpose for which this corporation is organized is (are) to engage in any activity within the purposes for which corporations may be organized under N.J.S.A. 14A 1-1 et seq.:
3. Registered Agent: Farid Saleh
4. Registered Office: 70 Adams Street  
Newark, New Jersey 07105
5. The aggregate number of shares which the corporation shall have authority to issue is: 100 no par value
6. If applicable, set forth the designation of each class and series of shares, the number in each, and a statement of the relative rights, preferences and limitations.
7. If applicable, set forth a statement of any authority vested in the board to divide the shares into classes or series or both and to determine or change their designation number, relative rights, preferences and limitations.
8. The first Board of Directors shall consist of 1 Directors (minimum of one).  
Name Street Address City State Zip  
Farid Saleh, 70 Adams Street, Newark, New Jersey
9. Name and Address of Incorporator(s):  
Name Street Address City State Zip  
Fausto Simoes, 83 Polk St., Newark, NJ 07105
10. The duration of the corporation is: perpetual
11. Other provisions:

In Witness whereof, each individual incorporator being over eighteen years of age has signed this certificate, or if the Incorporator is a corporation has caused this Certificate to be signed by its duly authorized officers this 18th day of January 1999.

Signature: FAUSTO SIMOES Signature: \_\_\_\_\_  
Signature: 0100969249 Signature: \_\_\_\_\_

TS 001251



Cancellation No. 92047056

*Terra Sul Corporation v. Boi Na Brasa, Inc.*

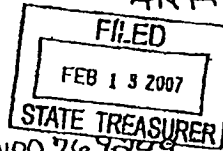
**EXHIBIT A-19**

Offered by Terra Sul Corporation

STATE OF NEW JERSEY  
DIVISION OF REVENUE

REGISTRATION OF ALTERNATE NAME

REGISTRATION OF ALTERNATE NAME



C-150G

Complete the following applicable information, and sign in the space provided. Please note that this form, the information contained in the filed form is considered public. Refer to the instructions on page 36 for filing fees and field-by-field requirements. Remember to attach the appropriate fee amount. Use attachments if more space is required for any field.

Check appropriate Statute:

- ☒ Title 14A:2-2.3 (3) New Jersey Business Corporation Act ☐ Title 42:2B-4 Limited Liability Company  
☐ Title 15A:2-2.3 (a) New Jersey Nonprofit Corporation Act ☐ Title 42:2A-4 Limited Partnership

Pursuant to the provisions of the appropriate statute, checked above, of the New Jersey Statutes, the undersigned corporation/partnership hereby applies for the registration of an Alternate Name in New Jersey for a period of five (5) years, and for that purpose submits the following application:

1. Name of Corporation/Business: TERRA SUL CORP.
2. NJ filer ID number: 0100769249
3. Set forth state of Original Incorporation/Formation: NEW JERSEY
4. Date of Incorporation/Formation: January 19, 1998
5. Date of Authorization (Foreign): \_\_\_\_\_
6. Alternate Name to be used: CHURRASCARIA BOI NA BRASA
7. State the purpose or activity to be conducted using the Alternate Name: RESTAURANT
8. The Business intends to use the Alternate Name in this State.
9. The Business has not previously used the Alternate Name in this State in violation of this Statute, or, if it has, the month and year in which it commenced such use is: N/A

Signature required:

For Corporation:  
For Limited Partnership:  
For all Other Business Types:

Signature

Farid Saleh  
NAME (please type):

Chairman of the Board, President, Vice-President,  
General Partner,  
Authorized Representative

PRESIDENT  
TITLE:

1/18/07  
DATE:

THE PURPOSE OF THIS FORM IS TO SIMPLIFY THE FILING REQUIREMENTS. IT DOES NOT  
REPLACE THE NEED FOR COMPETENT LEGAL ADVICE.

5 180337  
3385658

Feb 12 2007 13:40  
P.O.

PAK:973334A0321

SIMPOS



TS 001254



STATE OF NEW JERSEY  
DEPARTMENT OF TREASURY  
FILING CERTIFICATION (CERTIFIED COPY)

TERRA SUL CORP.

I, the Treasurer of the State of New Jersey,  
do hereby certify, that the above named business  
did file and record in this department the below  
listed document(s) and that the foregoing is a  
true copy of the  
Certificate Of Alternate Name  
Churrascaria Boi Na Brasa  
as the same is taken from and compared with the  
original(s) filed in this office on the date set  
forth on each instrument and now remaining on file  
and of record in my office.



IN TESTIMONY WHEREOF, I have  
hereunto set my hand and  
affixed my Official Seal  
at Trenton, this  
9th day of May, 2007

*Bradley Abelow*

Bradley Abelow  
State Treasurer

Cancellation No. 92047056

*Terra Sul Corporation v. Boi Na Brasa, Inc.*

**EXHIBIT A-20**

Offered by Terra Sul Corporation

**STATE OF NEW JERSEY**  
**Certificate of Authority**

DIVISION OF TAXATION  
TRENTON, N.J. 08646

The person, partnership or corporation named below is hereby authorized to collect:  
**NEW JERSEY SALES & USE TAX**

PURSUANT TO N.J.S.A. 54:32B-1 ET SEQ.

This authorization is good ONLY for the named person at the location specified herein.  
This authorization is null and void if any change of ownership or address is effected.

*Robert P. Thompson*  
Director, Division of Taxation

**TERRA SUL CORP.**  
**CHURASCABIA, LLC, d/b/a PRASA**  
**70 ADAMS STREET, STORE #4**  
**NEWARK, NJ 07102**

Registration No.: 223-638-652/800  
Tax Effective Date: 04-01-99  
Document Locator No.: 80000000000  
Date Issued: 08-27-02

This Certificate is NOT assignable or transferable. It must be conspicuously displayed at above address.

JED:JF 11/1/97



TS 001288

Cancellation No. 92047056

*Terra Sul Corporation v. Boi Na Brasa, Inc.*

**EXHIBIT A-21**

Offered by Terra Sul Corporation

# THOMPSON & KNIGHT LLP

ATTORNEYS AND COUNSELORS

1700 PACIFIC AVENUE - SUITE 3300  
DALLAS, TEXAS 76201-4083  
(214) 969-1700  
FAX (214) 969-1751  
www.tklaw.com

REMY MCELROY DAVIS  
DIRECT DIAL: (214) 969-1781  
EMAIL: Remy.McElroy@tklaw.com

AUSTIN  
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ALGERIA  
LONDON  
MEXICO CITY  
MONTERREY  
PARIS  
RIO DE JANEIRO

January 11, 2007

## VIA FEDERAL EXPRESS

Mr. Farid Saleh, President  
Gullas Corporation  
148 Komorn Street  
Newark, New Jersey 07105

Re: Trademark Infringement of Boi Na Braza, Inc.

Dear Mr. Saleh:

Our firm represents Boi Na Braza, Inc. ("Boi Na Braza") in intellectual property matters. Boi Na Braza, an established Brazilian Churrascarian restaurant chain, is the owner of the federally registered marks BOI NA BRAZA (Reg. No. 2,534,608), and BOI NA BRAZA & Design (Reg. No. 2,666,968), all of which cover restaurant services (collectively, the "Marks"). The BOI NA BRAZA mark has been in use at least since July 19, 1999 and the BOI NA BRAZA & Design mark has been in use at least since July 7, 2000. A copy of each Certificate of Registration is enclosed for your review. Boi Na Braza has established extensive rights in its trade name and marks, rights which are protected under the federally enacted Lanham Act. By its significant efforts and resources to promote its Marks, Boi Na Braza has also established a noted reputation and considerable good will in these marks among consumers. Furthermore, the federal registrations for the Boi Na Braza Marks provide our client with the exclusive right to use these Marks throughout the United States, as well as the right to exclude others from any and all unauthorized use of the Marks.

It has recently come to our attention that Gullas Corporation (hereinafter, "Gullas") is operating two Churrascarian restaurants in Newark, New Jersey under the names "Boi Na Braza Bar & Grill" and "Churrascaria Boi Na Braza" (collectively, the "Gullas Marks"). We note that the fictitious name for "Boi Na Braza Bar & Grill" was filed with the New Jersey Secretary of State on July 9, 2004, more than two years after the BOI NA BRAZA and BOI NA BRAZA & Design marks were federally registered and almost five years after the BOI NA BRAZA mark was first used. The website for Boi Na Braza, located at [www.boinabrasa.com](http://www.boinabrasa.com), shows that Boi Na Braza Bar & Grill and Churrascaria Boi Na Braza offer virtually the same style of restaurant services and food as those offered under the Boi Na Braza Marks. We believe that the use of the Gullas Marks is likely to result in significant confusion among consumers with our client's Boi Na Braza Marks due to the similarities in the appearance and sound of the marks as well as the similarities in the services offered under the marks. In fact, our client has recently become aware of actual consumer confusion. As the senior user and owner of the federal registrations, Boi Na Braza has the right of priority of use over your marks. We believe that your use of the Gullas





January 11, 2007

Page 2

Marks constitutes federal trademark infringement, dilution, and unfair competition under Section 43 of the Lanham Act.

Accordingly, we request that you immediately cease and desist any and all use of the name Boi Na Brasa, as well as any other variation that is confusingly similar to the Boi Na Braza Marks. In addition, we request that you immediately transfer the [www.boinabrasa.com](http://www.boinabrasa.com) domain name to Boi Na Braza. The return of a copy of this letter with an original signature will indicate your acceptance of these conditions as well as your agreement not to assist or induce any other person or entity to engage in such conduct.

If we fail to have a response from you by January 22, 2007, we will assume that no suitable response will be forthcoming and we will advise our client to consider pursuing all legal options to protect and enforce its federally protected rights.

We look forward to hearing from you.

Sincerely,



Remy McElroy Davis

Enclosures

cc: Jonas Matheus  
Boi Na Brasa Bar & Grill  
Boi Na Brasa Churrascaria

GULLAS CORPORATION  
148 KOMORN STREET  
NEWARK, NEW JERSEY 07105

HEREBY AGREES TO CEASE ANY AND ALL USE OF THE BOI GULLAS MARKS AND ANY MARK THAT IS A CONFUSINGLY SIMILAR VARIATION OF THE BOI NA BRAZA MARKS AND TO TRANSFER THE DOMAIN NAME [www.boinabrasa.com](http://www.boinabrasa.com) AND ANY SIMILAR VARIATION OWNED BY GULLAS CORPORATION TO BOI NA BRAZA, INC.

GULLAS CORPORATION

By: \_\_\_\_\_  
Farid Saleh, President

Date: \_\_\_\_\_

Int. CL: 42

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 2,666,968  
Registered Dec. 24, 2002

SERVICE MARK  
PRINCIPAL REGISTER



BOI NA BRAZA, INC. (TEXAS CORPORATION)  
415 DUNCAN PERRY ROAD  
ARLINGTON, TX 76011

THE ENGLISH TRANSLATION OF "BOI NA  
BRAZA" IS "OX IN EMBERS".

FOR: RESTAURANT SERVICES, IN CLASS 42  
(U.S. CLS. 100 AND 101).

SN 76-088,982, FILED 7-14-2000.

FIRST USE 7-6-2000; IN COMMERCE 7-6-2000.

PAULA MAHONEY, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 2,534,608

Registered Jan. 29, 2002

**SERVICE MARK  
PRINCIPAL REGISTER**

**BOI NA BRAZA**

BOI NA BRAZA, INC. (TEXAS CORPORATION)  
4025 WILLIAM D. TATE  
GRAPEVINE, TX 76501 BY ASSIGNMENT MATH-  
EUS BROTHERS, THE (PARTNERSHIP) AR-  
LINGTON, TX 76011

FOR: RESTAURANT SERVICES, IN CLASS 42  
(U.S. CLS. 100 AND 101).

FIRST USE 7-19-1999; IN COMMERCE 9-11-2000.

THE ENGLISH TRANSLATION OF "BOI NA  
BRAZA" MEANS "OX IN EMBERS".

SN 75-748,967, FILED 7-1-1999.

IRENE D. WILLIAMS, EXAMINING ATTORNEY

Cancellation No. 92047056

*Terra Sul Corporation v. Boi Na Brasa, Inc.*

**EXHIBIT A-22**

Offered by Terra Sul Corporation



**nyc guide**

**the best of nyc 2006**

eats  
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**Galleries**



**Happy Birthday, Mr. Black**  
by Tricia Romano

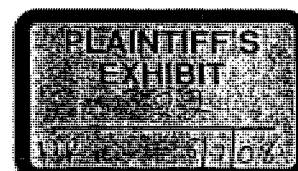
[more galleries](#)

**Best Choice Churrascaria - *BOI NA BRASA***

The all-you-can-eat meat feast called churrascaria has become commonplace around town; in fact, I even spotted one on Avenue B. Still, to save money and rub elbows with actual Brazilians one has to go to Newark's Ironbound, an easy ride on the PATH. Of the several I've reviewed there, current fave is **Boi Na Brasa**, off the beaten path in a strip mall decorated like a South American farmstead. The bacon-wrapped turkey is diverting, but I go right for the picanha and the blood-dripping beef rib. All meat is cooked over charcoal, and, even though there's a wine list, you can also bring your own. (Robert Sietsema)

**NEWARK, NEW JERSEY**  
70 Adams Street, store 4

<http://www.villagevoice.com/bestof/2006/category/food/146>



1/17/2007

**View Map**

Phone: 973-589-6984

## Other Food categories:

**PERFECT DOWNTOWN PIZZA**

*Adrienne's Pizza Bar*

**SUPERIOR SENEGALESE**

*Africa Kine*

**MOST VERSATILE TURK**

*Ali Baba*

**MOST ADORABLE DODGERS SHRINE**

*Armondo's Pizzeria*

**BEST PRODIGIOUS PIES**

*Aron's*

**MOST TITILLATING TORTILLA**

*Barca 18*

**BEST RESTAURANT NAME**

*Baza*

**AWESOMEST AUSTRIAN**

*Blaue Gans*

**BEST CHOICE CHURRASCARIA**

*Boi Na Brasa*

**BEST USE OF BEANS**

*Bosna Express*

**WILDEST WEENIES**

*Boulevard Drinks*

**SUREST SUSHI—BROOKLYN**

*Bozu*

**RAUNCHIEST RABBIT**

*Brasserie Ruhlmann*

**SMALLEST EATERY**

*Brazil Café*

**BEST STEAK HOUSE ALTERNATIVE**

*Buenos Aires*

**GRANDEST GROUND MEAT**

*Bulgara*

**BEST VEGAN FEED**

*Café Viva*

**BEST TOP-NOTCH TEUTONIC**

*Chalet Alpina*

**LATEST CHEESESTEAK**

*Cheesesteak Factory*

**MOST INGENIOUS INDO-CHINESE**

*Chopstick*

**STRANGEST SANDWICH—POULTRY**

*Ciccio's Pizza*

**BEST BABY CHICKEN**

*Colbeh*

**RICHEST CARROT CAKE**

*Concourse Jamaican Bakery*

**MOST EFFICACIOUS DOG**

*Coney's*

**BEST GALLERY-HOPPING FEED**

*Cookshop*

**BEST OUTRAGEOUSLY GOOD ORGANIC**

*Counter*

**BEST SUAVE SICILIAN**

*Dani*

**BEST JUICY JERK**

*Danny Express*

**TASTIEST TACOS**

*De Guerreros Taquería*

**BEST USE OF LAMB**

*Degustation*

**GREATEST GRITS**

*Ditch Plains*

**BETTER BROOKLYN BURGER**

*Dumont Burger*

**BEST USE OF SPINE**

*Ebisu*

**FABULOUS OLD-FASHIONED MALTED MILK**

*Egger's*

**LIVELIEST AND MOST LIVID LLAPINGACHOS**

*El Patio*

**BEST JAPANESE— MIDSACLE**

*En Japanese Brasserie*

**TONIEST TUNA**

*Falai Panetteria*

**BEST USE OF WATERMELON**

*Fatty Crab*

**MOST ATAVISTIC AFRICAN**

*Florence's*

**BEST NEWFANGLED ITALIAN**

*Frankies 457 Spuntino*

**BEST OLD-FASHIONED ITALIAN**

*Frost*

**MOST VIVACIOUS VERANDA**

*Garden Bay*

**TOP TEXAS BARBECUE**

*Halal Food*

**STRANGEST SANDWICH—SAUSAGE**

*Havana Sandwich Queen*

**WEIRDEST WOBBLY YELLOW STUFF**

*Himalayan Yak*

**VERY BEST BREAKFAST**

*Ici*

**MOST CONGENIAL CARPETBAGGER**

*Ithaka*

**BEST GNARLY NOODLES—QUEENS**

*Ja Gal Chi*

**BEST FANTASTIC FRANCHISE FRIES**

*Joe's Bestburger*

**STRANGEST SANDWICH—SEAFOOD**

*John's Famous Deli*

**COOLEST KOREATOWN NOODLES**

*Kum Ryong*

**SUPERLATIVE STEAK**

*Landmarc*

**WORLD'S FOREMOST DUMPLINGS**

*Lao Bei Fang*

**SECOND-BEST STATEN ISLAND PIZZA**

*Larocca's*

**BEST SEXY SAUSAGES**

*Lederhosen*

**BEST EXTRAORDINARY OXTAILS**

*Les' Restaurant*

**MOST OLD-FASHIONED KOSHER DELI**

*Liebman's*

**BEST FREAKY FRIES**

*Little Pepper*

**LOVELIEST LIVERWURST**

*Loreley*

**BEST FIERY FOOD**

*Los Dos Molinos*

**BEST DURABLE DOMINICAN**



*Los Viejos Amigos*

**BEST INNOVATIVE JAMAICAN**  
*M & A*

**BEST USE OF TESTICLES**  
*Maremma*

**BEST BRAWNY BAR FOOD**  
*Mazorca*

**BEST STAR WARS NOODLES**  
*Menkui Tei*

**BEST USE OF BABY GOAT**  
*Metsovo*

**DOPEST NON-DUMPLING DUMPLINGS**  
*Mie Jakarta*

**FINEST FRIED CHICKEN**  
*Mitchell's Soul Food*

**TINIEST THAI**  
*Mom Mam #1 Thai*

**FRESHEST FISH**  
*Morgan Seafood*

**BEST JAPANESE— UPSCALE**  
*Morimoto*

**BEST USE OF PRUNES**  
*Nomad*

**STRANGEST SANDWICH—PORK**  
*Noodle Bar*

**BEST USE OF REINDEER**  
*Nordic Delicacies*

**CHOICEST CONCEALED CHOW**  
*Nuevo Mexico*

**DAINTIEST DIM SUM—CHAMP**  
*Oriental Food Restaurant*

**BEST BUTCHER**  
*Pino's Meat Market*

**BEST RAUNCHY RIBS**  
*R.U.B.*

**BEST USE OF CLAMS**  
*Road House*

**BEST GROOVIEST GOO**  
*Sanaa*

**BEST JAPANESE— DOWNSCALE**  
*Sapporo*

**STUDLIEST SOUP DUMPLINGS**

*Shanghai Café*

**MOST MAGNIFICENT MANDOO**

*Shinpo Korean*

**MARVELOUS MALAYSIAN**

*Skyway*

**BEST GROOVY GYRO**

*Spartan Souvlaki*

**BEST DEADLY DOSAS**

*Sri Ganesh's Dosa House*

**OY! OKINAWAN**

*Suibi*

**WORLD'S BEST NOODLES**

*Super Taste*

**SUREST SUSHI—DOWNTOWN MANHATTAN**

*Sushi à la Kawa*

**BEST UNEXPECTED OUTDOOR DINING**

*Taam Tov*

**CHILLEST CHILI**

*Taquería D.F*

**MOST SENSATIONAL SPLURGE**

*Telepan*

**FARTHEST-FLUNG ASIAN**

*Thai Food House*

**BEST USE OF EGGS**

*Uovo*

**SUMATRA SYMPHONY**

*Upi Jaya*

**GOLDEN BLINTZ AWARD**

*Veselka*

**BRAINIEST SCIENCE RESTAURANT**

*WD-50*

**DAINTIEST DIM SUM—RUNNER-UP**

*World Tong*

**MAGNIFICENT MOUNTAIN**

*Yemen Cuisine*

**BEST TRENDY TURK**

*Zeytin*

**BEST UPPER EAST SIDE BURGER**

*Zip Burger*

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Cancellation No. 92047056

*Terra Sul Corporation v. Boi Na Brasa, Inc.*

**EXHIBIT B**

Offered by Terra Sul Corporation

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Terra Sul Corporation a/k/a	)	
Churrascaria Boi Na Brasa, Inc.,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Cancellation No. 92047056
	)	
Boi Na Brasa, Inc.,	)	
	)	
Registrant.	)	

**OBJECTIONS AND ANSWERS TO PETITIONER TERRA SUL'S  
FIRST SET OF INTERROGATORIES**

To: Terra Sul Corporation a/k/a Churrascaria Boi Na Brasa, Inc., by and through its attorney of record, Eamon J. Wall, Patterson & Sheridan, LLP, 595 Shrewsbury Ave., Suite 100, Shrewsbury, New Jersey 07702.

Pursuant to Federal Rule of Civil Procedure 33 and the Trademark Trial and Appeal Board Manual of Procedure ("TBMP") Section 405.04, Registrant Boi Na Brasa Holdings, LLC ("Boi Na Brasa" or "Registrant"), registrant by assignment from Boi Na Brasa, Inc., submits these Objections and Answers to Petitioner Terra Sul's ("Terra Sul's") First Set of Interrogatories.

**General Objections**

1. Boi Na Brasa objects to the Definitions and Instructions and the Interrogatories to the extent that they purport to impose burdens and obligations on Boi Na Brasa greater than those imposed by the Federal Rules of Civil Procedure or the TBMP.
2. Boi Na Brasa objects to each of Terra Sul's Interrogatories to the extent that they seek information protected by the attorney-client privilege and/or work product doctrine, or any other applicable privilege or protection from discovery.

3. Boi Na Braza further objects to the Interrogatories to the extent that they seek confidential business information. Boi Na Braza will produce confidential information when a suitable protective order is signed by the parties and entered by the Trademark Trial and Appeal Board ("TTAB").

4. All responses and objections contained herein are based only upon information and documents which are presently available to and specifically known to Boi Na Braza after conducting a reasonable and diligent investigation.

5. Each and all of these General Objections are hereinafter incorporated by reference in response to the Interrogatories below.

INTERROGATORIESINTERROGATORY NO. 1:

Identify all facts, persons with knowledge and all Documents known to You as of the date of service of Terra Sul's First Set of Interrogatories to Registrant Boi Na Braza that support Paragraph 4 of Your Answer, including but not limited to your denial that the term "boi na braza" is not properly translated as "Ox in embers."

ANSWER:

Registrant objects to this interrogatory because it seeks information that is subject to the attorney-client privilege and/or work product doctrine. Subject to the foregoing specific and general objections, and without waiving the same, Registrant responds that Jonas S. Matheus, Julio C. Matheus, and Joseph R. Matheus (the "Matheus brothers") are each founders of Registrant, and each is a native Brazilian and a fluent speaker of the Portuguese language. As fluent speakers of the language, the Matheus brothers understand the phrase "Boi Na Braza" to be properly translated from Portuguese into English as "Ox in embers." Moreover, Maria A. Laporte, a professional certified translator, member of the American Translators Association, has certified that the translation of "Boi Na Braza", from Portuguese to English, is "Ox in ember" or "Ox on hot coal." According to Ms. Laporte, the correct spelling of the word "Braza" in Portuguese is with an "s" and not a "z." Pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, Registrant will produce business records, if any, from which the requested information can be gleaned. Discovery is continuing and Registrant reserves the right to supplement these answers after additional discovery.

INTERROGATORY NO. 2:

Identify all facts, persons with knowledge and all Documents known to You as of the date of service of Terra Sul's First Set of Interrogatories to Registrant Boi Na Braza that support

Paragraph 4 of Your Answer, including but not limited to your denial that the term "brazá" is a slang term for things Brazilian.

**ANSWER:**

Registrant objects to this interrogatory because it seeks information that is subject to the attorney-client privilege and/or work product doctrine. Subject to the foregoing specific and general objections, and without waiving the same, Registrant responds that the Matheus brothers are each founders of Registrant; and each is a native Brazilian and a fluent speaker of the Portuguese language. As fluent speakers of the language, the Matheus brothers do not understand there to be any translation of the word "brazá" from Portuguese to English to be "things Brazilian." Moreover, Maria A. Laporte, a professional certified translator, member of the American Translators Association, has certified that the translation of "Boi Na Braza", from Portuguese to English, is "Ox in ember" or "Ox on hot coal." According to Ms. Laporte, the correct spelling of the word "Braza" in Portuguese is with an "s" and not a "z." Pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, Registrant will produce business records, if any, from which the requested information can be gleaned. Discovery is continuing and Registrant reserves the right to supplement these answers after additional discovery.

**INTERROGATORY NO. 3:**

Identify all facts, persons with knowledge and all Documents known to You as of the date of service of Terra Sul's First Set of Interrogatories to Registrant Boi Na Braza that support Paragraph 4 of Your Answer, including but not limited to your denial that the term "boi na brazá" may possibly be translated as "Ox in Brazil" or perhaps "Brazilian Ox."

**ANSWER:**

Registrant objects to this interrogatory because it seeks information that is subject to the attorney-client privilege and/or work product doctrine. Subject to the foregoing specific and general objections, and without waiving the same, Registrant responds that the Matheus brothers



are each founders of Registrant, and each is a native Brazilian and a fluent speaker of the Portuguese language. As fluent speakers of the language, the Matheus brothers do not understand there to be any translation of the phrase "boi na braza" from Portuguese to English to be "Ox in Brazil" or "Brazilian Ox." Moreover, Maria A. Laporte, a professional certified translator, member of the American Translators Association, has certified that the translation of "Boi Na Braza", from Portuguese to English, is "Ox in ember" or "Ox on hot coal." According to Ms. Laporte, the correct spelling of the word "Braza" in Portuguese is with an "s" and not a "z." Pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, Registrant will produce business records, if any, from which the requested information can be gleaned. Discovery is continuing and Registrant reserves the right to supplement these answers after additional discovery.

**INTERROGATORY NO. 4:**

Identify all facts, persons with knowledge and all Documents known to You as of the date of service of Terra Sul's First Set of Interrogatories to Registrant Boi Na Braza that support Paragraph 4 of Your Answer, including but not limited to your denial that "the Brazilian connotations of the term Braza evidence a geographic commercial impression to the relevant consumer."

**ANSWER:**

Boi Na Braza objects to this interrogatory as it seeks information that is protected by the attorney-client privilege and/or work product doctrine. Boi Na Braza further objects that the phrase "relevant consumer" is vague and ambiguous. Boi Na Braza further objects to Terra Sul's implication that the relevant consumer is Portuguese-speaking and able to translate "boi na braza" into English. Subject to the foregoing general and specific objections, and without waiving the same, Boi Na Braza does not understand the phrase "boi na braza" to mean "Brazilian Ox" or "Ox in Brazil" (See Registrant's Responses to Interrogatories 1-3). Further,

Registrant does not understand the phrase "brazá" to translate into anything that includes the words "Brazil," "Brazilian," or "things Brazilian," therefore the phrase "boi na brazá" carries no geographic commercial impression. Pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, Registrant will produce business records, if any, from which the requested information can be gleaned. Discovery is continuing and Registrant reserves the right to supplement these answers after additional discovery.

**INTERROGATORY NO. 5:**

Identify all facts, persons with knowledge and all Documents known to You as of the date of service of Terra Sul's First Set of Interrogatories to Registrant Boi Na Braza that support Paragraph 6 of Your Answer, including but not limited to your denial that the term "BOI NA BRAZA, when properly translated from Portuguese to English and used in connection with the services set forth in the registration, is merely descriptive or deceptively misdescriptive of them within the meaning of Section 2(e) of the Trademark Act..."

**ANSWER:**

Boi Na Braza objects to this interrogatory as it seeks information that is protected by the attorney-client privilege and/or work product doctrine. Boi Na Braza further objects to Terra Sul's implication that the relevant consumer is Portuguese-speaking and able to translate "boi na brazá" into English. Subject to the foregoing general and specific objections, and without waiving the same, Boi Na Braza responds that it does not understand the term "boi na brazá" to mean "Brazilian Ox" or "Ox in Brazil" (See Registrant's Responses to Interrogatories Nos. 1-3). Neither the phrase "boi na brazá" nor "Ox in embers" describes a characteristic or quality of the restaurant services provided under the mark. It likewise is not deceptively misdescriptive of such services as either translated or in the native Portuguese, the mark "BOI NA BRAZA" is not misdescriptive of any characteristic or quality of the services; relevant consumers are not likely to believe that the phrase "boi na brazá" or even "Ox in embers" actually describes the services

rendered, nor is the name likely to induce consumers to patronize the restaurant based on a belief that the phrase "boi na braza" or "Ox in embers" is descriptive somehow of restaurant services, when in fact it is not.

**INTERROGATORY NO. 6:**

Identify all facts, persons with knowledge and all Documents known to You as of the date of service of Terra Sul's First Set of Interrogatories to Registrant Boi Na Braza that support Paragraph 6 of Your Answer, including but not limited to your denial that the term "BOI NA BRAZA... [is] primarily geographically descriptive ... within the meaning of Section 2(e) of the Trademark Act..."

**ANSWER:**

Boi Na Braza objects to this interrogatory as it seeks information that is protected by the attorney-client privilege and/or work product doctrine. Boi Na Braza further objects to Terra Sul's implication that the relevant consumer is Portuguese-speaking and able to translate "boi na braza" into English. Subject to the foregoing general and specific objections, and without waiving the same, Boi Na Braza responds that it understands the phrase "boi na braza" to mean "Ox in embers" or "Ox in ember" and not "Brazilian Ox" or "Ox in Brazil" (See Registrant's Responses to Interrogatories 1-3). The phrase "boi na braza" therefore does not primarily describe the geographic area or region of the source of the services. To Registrant's knowledge, there is no geographic locale known as "boi na braza." Even translated, the phrase "Ox in ember" or "Ox in embers" does not identify any geographic region to Registrant's knowledge.

**INTERROGATORY NO. 7:**

Identify all facts, persons with knowledge and all Documents known to You as of the date of service of Terra Sul's First Set of Interrogatories to Registrant Boi Na Braza that support Paragraph 6 of Your Answer, including but not limited to your denial that the term "BOI NA BRAZA... [is] geographically deceptively misdescriptive ... within the meaning of Section 2(e)

of the Trademark Act..."

**ANSWER:**

Boi Na Braza objects to this interrogatory as it seeks information that is protected by the attorney-client privilege and/or work product doctrine. Boi Na Braza further objects to Terra Sul's implication that the relevant consumer is Portuguese-speaking and therefore able to translate the phrase "boi na braza" into English. Subject to the foregoing general and specific objections, and without waiving the same, Boi Na Braza responds that it understands the phrase "boi na braza" to mean "Ox in embers" or "Ox in ember" and not "Brazilian Ox" or "Ox in Brazil" (See Registrant's Responses to Interrogatories 1-3). There is no implication from the phrase "boi na braza" that the services originate from a geographic locale of this name when in fact they do not. As stated in Registrant's Response to Interrogatory No. 6, neither the phrase "boi na braza" or "Ox in embers" are descriptive of any geographic place.

**INTERROGATORY NO. 8:**

Identify all facts, persons with knowledge and all Documents known to You as of the date of service of Terra Sul's First Set of Interrogatories to Registrant Boi Na Braza that support Paragraph 7 of Your Answer, including but not limited to your contention that Petitioner's claims are barred by the Doctrine of Laches.

**ANSWER:**

Boi Na Braza objects to this interrogatory as it seeks information that is protected by the attorney-client privilege and/or work product doctrine. Subject the foregoing general and specific objections, and without waiving the same, Boi Na Braza responds that upon reasonable information and belief, Boi Na Braza believes that Terra Sul was aware of its restaurant services long before Boi Na Braza initiated any contact with Mr. Farid Saleh and in fact implied a false association with Boi Na Braza's organization. Pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, Registrant will produce business records, if any, from which the requested

information can be gleaned. Discovery is continuing and Registrant reserves the right to supplement these answers after additional discovery.

**INTERROGATORY NO. 9:**

Identify all facts, persons with knowledge and all Documents known to You as of the date of service of Terra Sul's First Set of Interrogatories to Registrant Boi Na Braza that support Paragraph 8 of Your Answer, including but not limited to your contention that Petitioner's claims are barred by the Doctrine of Waiver.

**ANSWER:**

Boi Na Braza objects to this interrogatory as it seeks information that is protected by the attorney-client privilege and/or work product doctrine. Subject the foregoing general and specific objections, and without waiving the same, Boi Na Braza responds that upon reasonable information and belief, Boi Na Braza believes that Terra Sul was aware of its restaurant services long before Boi Na Braza initiated any contact with Mr. Farid Saleh and in fact implied a false association with Boi Na Braza's organization. Pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, Registrant will produce business records, if any, from which the requested information can be gleaned. Discovery is continuing and Registrant reserves the right to supplement these answers after additional discovery.

**INTERROGATORY NO. 10:**

Identify all facts, persons with knowledge and all Documents known to You as of the date of service of Terra Sul's First Set of Interrogatories to Registrant Boi Na Braza that support Paragraph 9 of Your Answer, including but not limited to your contention that Petitioner's claims are barred by the Doctrine of Acquiescence.

**ANSWER:**

Boi Na Braza objects to this interrogatory as it seeks information that is protected by the attorney-client privilege and/or work product doctrine. Subject the foregoing general and

specific objections, and without waiving the same, Boi Na Braza responds that upon reasonable information and belief, Boi Na Braza believes that Terra Sul was not only aware of its restaurant services long before Boi Na Braza initiated any contact with Mr. Farid Saleh but in fact implied a false association with Boi Na Braza's organization, therefore evidencing active consent to Boi Na Braza's use of the term "boi na braza." Pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, Registrant will produce business records, if any, from which the requested information can be gleaned. Discovery is continuing and Registrant reserves the right to supplement these answers after additional discovery.

**INTERROGATORY NO. 11:**

Identify all facts, persons with knowledge and all Documents known to You as of the date of service of Terra Sul's First Set of Interrogatories to Registrant Boi Na Braza that support Paragraph 10 of Your Answer, including but not limited to your contention that Petitioner's claims are barred by the Doctrine of Estoppel and Equitable Estoppel.

**ANSWER:**

Boi Na Braza objects to this interrogatory as it seeks information that is protected by the attorney-client privilege and/or work product doctrine. Subject the foregoing general and specific objections, and without waiving the same, Boi Na Braza responds that upon reasonable information and belief, Boi Na Braza believes that Terra Sul was not only aware of its restaurant services long before Boi Na Braza initiated any contact with Mr. Farid Saleh but in fact implied a false association with Boi Na Braza's organization. Pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, Registrant will produce business records, if any, from which the requested information can be gleaned. Discovery is continuing and Registrant reserves the right to supplement these answers after additional discovery.

**INTERROGATORY NO. 12:**

Identify all facts, persons with knowledge and all Documents known to You as of the date of service of Terra Sul's First Set of Interrogatories to Registrant Boi Na Braza that support Paragraph 11 of Your Answer, including but not limited to your contention that Petitioner's claims are barred by the Doctrine of Unclean Hands.

**ANSWER:**

Boi Na Braza objects to this interrogatory as it seeks information that is protected by the attorney-client privilege and/or work product doctrine. Subject the foregoing general and specific objections, and without waiving the same, Boi Na Braza responds that upon reasonable information and belief, Boi Na Braza believes that Terra Sul was not only aware of its restaurant services long before Boi Na Braza initiated any contact with Farid Saleh, but in fact implied a false association with Boi Na Braza's organization. Furthermore, upon reasonable belief after diligent investigation, Boi Na Braza believes that Terra Sul has provided certain documentation to Boi Na Braza representing that Churrascaria Boi Na Braza is incorporated under the laws of the State of New Jersey, when in fact it is not. Pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, Registrant will produce business records, if any, from which the requested information can be gleaned. Discovery is continuing and Registrant reserves the right to supplement these answers after additional discovery.

**INTERROGATORY NO. 13:**

Identify each and every instance known by Boi Na Braza of the use of the term "boi na braza," with or without a "TM" designation and with or without a direct association to Boi Na Braza's name, including uses by Boi Na Braza and uses by other entities (whether authorized or not), and including the dates of each instance of use and the product or service associated with each such use and the geographic regions of use.

**ANSWER:**

Boi Na Braza objects to this interrogatory as it is overly broad and unduly burdensome. Boi Na Braza further objects to this interrogatory as it seeks information that is protected by the attorney-client privilege and/or work product doctrine. Boi Na Braza further objects to this interrogatory because it seeks information that is not within Boi Na Braza's possession, control or custody. Subject to the foregoing specific and general objections, and without waiving the same, Boi Na Braza responds that it has used the "Boi Na Braza" mark continuously in the marketing and advertising of its restaurant services since at least as early as July 1, 1999. Boi Na Braza has used, advertised and promoted the "Boi Na Braza" mark in numerous magazines and publications that are circulated throughout the entire United States and internationally, as well as on its website, located at [www.boinabraza.com](http://www.boinabraza.com). Apart from Terra Sul's use of the names "Churrasearia Boi Na Brasa" and "Boi Na Brasa Bar-& Grill," Boi Na Braza is only aware of one other instance of use of the phrase "boi na brasa," by a company named Ravia Investments, for a restaurant in Pampano Beach, Florida. The restaurant is believed to have begun using the name around November of 2006, but as presently advised, is no longer in business. Pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, Registrant will produce business records, if any, from which the requested information can be gleaned. Discovery is continuing and Registrant reserves the right to supplement these answers after additional discovery.

**INTERROGATORY NO. 14:**

Identify all facts, persons with knowledge and all Documents known to You as of the date of service of Terra Sul's First Set of Interrogatories to Registrant Boi Na Braza relating to any customer surveys or polls with regard to uses of the term "boi na braza" by Boi Na Braza or others.

**ANSWER:**

Boi Na Braza objects to this interrogatory as it is overly broad and unduly burdensome. Further, Boi Na Braza objects to this interrogatory because it seeks information that is not within



Boi Na Braza's possession, control or custody. Subject to the foregoing specific and general objections, and without waiving the same, Boi Na Braza is not aware of any customer surveys or polls with regard to uses of the term "boi na braza."

**INTERROGATORY NO. 15:**

Identify all sources, publications and/or Documents known to You as of the date of service of Terra Sul's First Set of Interrogatories to Registrant Boi Na Braza relating to or evidencing how the term "boi na braza" is distinctive to the relevant public.

**ANSWER:**

Boi Na Braza objects to this interrogatory as it is overly broad and unduly burdensome. Further, Boi Na Braza objects to this interrogatory because it seeks information that is not within Boi Na Braza's possession, control or custody. Subject to the foregoing specific and general objections, and without waiving the same, Boi Na Braza responds that it is the owner of U.S. Reg. No. 2,534,608 for the mark BOI NA BRAZA. Pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, Registrant will produce business records, if any, from which the requested information can be gleaned. Discovery is continuing and Registrant reserves the right to supplement these answers after additional discovery. Registrant also directs Terra Sul's attention to Registrant's Response to Request for Production No. 15.

**INTERROGATORY NO. 16:**

Identify all facts, persons with knowledge and all Documents known to You as of the date of service of Terra Sul's First Set of Interrogatories to Registrant Boi Na Braza relating to the creation or origination of the term "boi na braza" by Registrant.

**ANSWER:**

Boi Na Braza objects to this interrogatory as it seeks information that is protected by the attorney-client privilege and/or work product doctrine. Subject to the foregoing specific and general objections, and without waiving the same, Boi Na Braza responds that the name "boi na

brasa" is a well known name that is often used in Brazil. Based on their knowledge of the name from its use in Brazil, the Matheus brothers chose this name for their restaurant business and began marketing the business as such at least as early as July 1, 1999. The Matheus brothers changed the "s" to a "z" to give the name more distinctiveness. Pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, Registrant will produce business records, if any, from which the requested information can be gleaned. Discovery is continuing and Registrant reserves the right to supplement these answers after additional discovery.

**INTERROGATORY NO. 17:**

Identify all facts, persons with knowledge and all Documents known to You as of the date of service of Terra Sul's First Set of Interrogatories to Registrant Boi Na Braza relating to the marketing, promotion, sale or use of the term "boi na braza" by Registrant.

**ANSWER:**

Boi Na Braza objects to this interrogatory as it is overly broad and unduly burdensome. Subject to the foregoing specific and general objections, and without waiving the same, Boi Na Braza responds that it has used, advertised and promoted the "BOI NA BRAZA" name for its restaurant services since at least as early as July 1, 1999. It has marketed and advertised in numerous magazines and publications that are circulated throughout the entire United States and internationally, as well as on its website, located at [www.boinabraza.com](http://www.boinabraza.com). Boi Na Braza has long engaged the services of Wellspring & Associates to handle the majority of such marketing and advertising on its behalf. Pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, Registrant will produce business records, if any, from which the requested information can be gleaned. Discovery is continuing and Registrant reserves the right to supplement these answers after additional discovery.

**INTERROGATORY NO. 18:**

Identify all facts, persons with knowledge and all Documents known to You as of the date of service of Terra Sul's First Set of Interrogatories to Registrant Boi Na Braza relating to the date of first use of the term "boi na braza" by Registrant.

**ANSWER:**

Boi Na Braza objects to this interrogatory as it seeks information that is protected by the attorney-client privilege and/or work product doctrine. Subject to the foregoing specific and general objections, and without waiving the same, Boi Na Braza responds that the name "boi na brasa" is a well known name that is often used in Brazil. Based on their knowledge of the name from its use in Brazil, the Matheus brothers chose this name for their restaurant business and began marketing the business as such at least as early as July 1, 1999. The Matheus brothers changed the "s" to a "z" to give the name more distinctiveness. Pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, Registrant will produce business records, if any, from which the requested information can be gleaned. Discovery is continuing and Registrant reserves the right to supplement these answers after additional discovery.

**INTERROGATORY NO. 19:**

Identify all facts, persons with knowledge and all Documents known to You as of the date of service of Terra Sul's First Set of Interrogatories to Registrant Boi Na Braza relating to Registrant's knowledge or awareness of Terra Sul's use of the terms "boi na brasa" and/or "churrascaria boi na brasa."

**ANSWER:**

Boi Na Braza objects to this interrogatory as it seeks information that is protected by the attorney-client privilege and/or work product doctrine. Subject to the foregoing specific and general objections, and without waiving the same, Boi Na Braza responds that it had no knowledge of Terra Sul's use of the terms "boi na brasa" and/or "churrascaria boi na brasa" until

it was informed by Terra Sul's counsel, on or about January 19, 2007. Pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, Registrant will produce business records, if any, from which the requested information can be gleaned. Discovery is continuing and Registrant reserves the right to supplement these answers after additional discovery.

**INTERROGATORY NO. 20:**

Identify all facts, persons with knowledge and all Documents known to You as of the date of service of Terra Sul's First Set of Interrogatories to Registrant Boi Na Braza relating to the geographic scope or area (by city, state and country) of Registrant's use of the term "boi na braza" in connection with its restaurant business.

**ANSWER:**

Boi Na Braza objects to this interrogatory as it is overly broad and unduly burdensome. Subject to the foregoing specific and general objections, and without waiving the same, Boi Na Braza responds that it operates restaurants in Dallas, Texas and Cincinnati, Ohio, formerly in Atlanta Georgia, and currently is the licensor of the "BOI NA BRAZA" name in Atlanta, Georgia. Boi Na Braza advertises the "BOI NA BRAZA" mark nationally and internationally through the services of Wellspring & Associates. Specifically, its advertisements are placed in American Way magazine and Delta Sky magazine, which have a circulation that covers the entire United States, as well as numerous countries internationally. Its website, located at [www.boinabraza.com](http://www.boinabraza.com), may viewed around the world. Boi Na Braza also advertises in publications that are local to its various restaurants, located in Dallas, Texas and Cincinnati, Ohio. There is also advertising local to a restaurant in Atlanta, Georgia, which is a licensee of the "BOI NA BRAZA" trademark. Pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, Registrant will produce business records, if any, from which the requested information can be gleaned. Discovery is continuing and Registrant reserves the right to supplement these answers after additional discovery.

**INTERROGATORY NO. 21:**

Identify any and all expert witnesses who may testify at trial through deposition, declaration and/or affidavit, and consulting expert witnesses whose mental impressions or opinions have been reviewed by a testifying expert, and in your answer include the following:

- (a) The expert's name, business name, employer, address, and telephone number;
- (b) The facts known by the expert that relate to or form the basis of the expert's mental impressions and opinions formed or made in connection with the case and in which discovery is sought, regardless of when and how the factual information was acquired;
- (c) The expert's mental impressions and opinions formed or made in connection with the case and in which discovery is sought, and any methods used to derive;
- (d) Any bias of the witness;
- (e) A description of all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by, or for the expert in anticipation of a testifying expert's testimony; and
- (f) Attach the expert's current resume and bibliography.

**ANSWER:**

Boi Na Braza objects to this interrogatory as it seeks information that is protected by the attorney-client privilege and/or work product doctrine. Subject to the foregoing specific and general objections, and without waiving the same, Boi Na Braza responds that it has yet to determine the need for any expert witnesses and thus has not, as yet, identified any such expert witnesses to testify at trial. Registrant will duly supplement its response if necessary.

**INTERROGATORY NO. 22:**

Identify the name, address, employer, and telephone number of persons having knowledge of relevant facts supporting or refuting each and every allegation in Your Answer to Terra Sul's Petition to Cancel, the relevant facts believed by You to be known by each such

person and whether that person is expected to be called to testify at trial through deposition, declaration and/or affidavit.

ANSWER:

Boi Na Braza objects to this interrogatory as it seeks information that is protected by the attorney-client privilege and/or work product doctrine. Subject to the foregoing general and specific objections, and without waiving the same, Boi Na Braza responds that it believes the following people to have relevant facts supporting our Answer to Terra Sul's Petition to Cancel. Boi Na Braza has not made any decisions as to whether it expects to call any of the following people to testify through deposition, declaration and/or affidavit.

Mr. Jonas Matheus  
Boi Na Braza Holdings, LLC  
1452 Hughes Road, Suite 330  
Grapevine, Texas 76051  
817-652-0526

Mr. Matheus is the Secretary of Boi Na Braza Holdings, LLC. He is believed to be familiar with information regarding the general business operations of Boi Na Braza and its conception, development and marketing of the "BOI NA BRAZA" name for its restaurants.

Mr. Julio Matheus  
Boi Na Braza Holdings, LLC  
1452 Hughes Road, Suite 330  
Grapevine, Texas 76051  
817-652-0526

Mr. Matheus is Vice President of Boi Na Braza Holdings, LLC. He is believed to be familiar with information regarding the general business operations of Boi Na Braza and its conception, development and marketing of the "BOI NA BRAZA" name for its restaurants.

Mr. Joseph Matheus  
Boi Na Braza Holdings, LLC  
1452 Hughes Road, Suite 330  
Grapevine, Texas 76051  
817-652-0526

Mr. Matheus is President of Boi Na Braza Holdings, LLC. He is believed to be familiar with information regarding the general business operations of Boi Na Braza and its conception, development and marketing of the "BOI NA BRAZA" name for its restaurants.

Neimar Hensel  
Boi Na Braza Cincinatti, LLC

1452 Hughes Road, Suite 330  
Grapevine, Texas 76051  
817-652-0526

Mr. Hensel is a manager at the Cincinnati location of Boi Na Braza. He is believed to have knowledge regarding Terra Sul's knowledge of and statements regarding Boi Na Braza.

Haroldo F. De Mello  
Formerly of Boi Na Braza Atlanta, LLC  
Rua Frei Mansueto #1520, Apt. 420  
Fortaleza, Ceara  
Brazil

Mr. De Mello is a former manager of the Atlanta location of Boi Na Braza. He is believed to have knowledge regarding Terra Sul's knowledge of and statements regarding Boi Na Braza.

**INTERROGATORY NO. 23:**

Identify all of the channels of trade in or through which Registrant markets and/or sells or intends to market and/or sell any product or service of Registrant under the mark "boi na braza," and for each such product or service of Registrant state the annual dollar volume of such sales in or to the United States in that channel for each year (or for each month for periods less than a year) from the date of the first such sale in each channel to the present.

**ANSWER:**

Boi Na Braza objects to this interrogatory as it is overly broad and unduly burdensome. Boi Na Braza further objects to this interrogatory as it seeks information that is protected by the attorney-client privilege and/or work product doctrine. Boi Na Braza further objects to this interrogatory as it seeks confidential business information. Subject to the foregoing specific and general objections, and without waiving the same, Boi Na Braza responds that it operates restaurants in Dallas, Texas and Cincinnati, Ohio, formerly in Atlanta, Georgia, and currently is the licensor of the "BOI NA BRAZA" name in Atlanta, Georgia. Boi Na Braza advertises the "BOI NA BRAZA" mark nationally and internationally through the services of Wellspring & Associates. Specifically, its advertisements are placed in American Way magazine and Delta Sky magazine, which have a circulation that covers the entire United States, as well as numerous

countries internationally. It also advertises its services through its website, located at [www.boinabraza.com](http://www.boinabraza.com). Boi Na Braza also advertises in publications that are local to its various restaurants, located in Dallas, Texas and Cincinnati, Ohio. There is also advertising local to a restaurant in Atlanta, Georgia, which is a licensee under the "BOI NA BRAZA" trademark. Pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, Registrant will produce business records, if any, from which the requested information can be gleaned. Discovery is continuing and Registrant reserves the right to supplement these answers after additional discovery.

**INTERROGATORY NO. 24:**

For all answers and responses to Terra Sul's First Requests for Admission (No. 1-xx) not unequivocally admitted, state the basis for, and identify all facts, persons with knowledge and Documents supporting Registrant's denial or partial admission of each individual Request for Admission by Terra Sul.

**ANSWER:**

Boi Na Braza objects to this interrogatory as it seeks information that is protected by the attorney-client privilege and/or work product doctrine. Boi Na Braza further objects to the extent that this interrogatory seeks information relating to an admission request that was objected to and, as to any such request, objects to providing such information for the same reason the request was objected to. Subject to the foregoing general and specific objections, and without waiving the same, Boi Na Braza responds as follows:

Answering to Admission Requests No. 1-9, 11-12:

Request No. 1: Denied because Boi Na Braza used the term "boi na braza" in connection with its business prior to July 1, 1999.

Request No. 2: Admitted to the extent that Boi Na Braza has never owned or operated a restaurant by the names "Boi Na Braza," "Boi Na Brasa," or "Churrascaria Boi Na Brasa" in New Jersey.

Request No. 3: Admitted to the extent that Boi Na Braza has never owned or operated a restaurant by the names "Boi Na Braza," "Boi Na Brasa," or "Churrascaria Boi Na Brasa" in New York.



Request No. 4: Admitted to the extent that Boi Na Braza has never operated a Brazilian-style churrascarian restaurant in New Jersey.

Request No. 5: Admitted to the extent that Boi Na Braza has never operated a Brazilian-style churrascarian restaurant in New York.

Request No. 6: Denied because Boi Na Braza does not have enough information regarding this request to offer a response at this time.

Request No. 7: Denied because Boi Na Braza does not have enough information regarding this request to offer a response, and therefore it denies the same.

Request No. 8: Denied because the term "braza" does not translate from Portuguese to English as "things Brazilian."

Request No. 9: Denied because Registrant does serve food from Brazil that it is imported through a third party.

Request No. 11: Denied because Boi Na Braza owns U.S. Reg. No. 2,534,608 for the phrase BOI NA BRAZA. This information is of public record.

Request No. 12: Denied because Boi Na Braza owns U.S. Reg. No. 2,534,608 for the phrase BOI NA BRAZA. This information is of public record.

**INTERROGATORY NO. 25:**

Identify separately for each individual Interrogatory 1-24, all persons involved in any way in the submission of information for or the preparation of answers, objections or responses to these interrogatories.

**ANSWER:**

Boi Na Braza objects to this interrogatory because it is overly broad, unduly burdensome and duplicative. Subject to the foregoing specific and general objections, Boi Na Braza responds that the following people were involved in the preparation of answers, objections or responses to these interrogatories:

Jonas Matheus

Julio Matheus

Joseph Matheus

AUG. 7. 2007 5:15PM

THOMPSON & KNIGHT

NO. 816—P. 23

Dated: 8.7.2007

Respectfully submitted,

BOI NA BRAZA HOLDINGS, LLC

By: Remy M. Davis  
Herbert J. Hammond  
Deborah L. Lively  
Remy M. Davis  
THOMPSON & KNIGHT LLP  
1700 Pacific Avenue  
Suite 3300  
Dallas, Texas 75201  
(214) 969-1781  
(214) 969-1751 (Fax)

Attorneys for Registrant  
Boi Na Braza Holdings, LLC

2213854.1

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing First Set of Interrogatories is being served upon Petitioner's attorney of record, Eamon J. Wall, by certified mail, return receipt requested, on this 7<sup>th</sup> day of August, 2007, in an envelope addressed to:

Eamon J. Wall  
Patterson & Sheridan, LLP  
595 Shrewsbury Avenue, Suite 100  
Shrewsbury, New Jersey 07702

Remy M. Davis  
Remy M. Davis

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Terra Sul Corporation a/k/a  
Churrascaria Boi Na Braza

Petitioner,

v.

Boi Na Braza, Inc.,

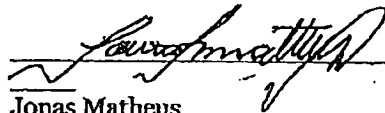
Respondent.

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Cancellation No. 92047056

**VERIFICATION**

I am over the age of eighteen years. I am Secretary of Boi Na Braza Holdings, LLC ("Boi Na Braza"), registrant by assignment from Boi Na Braza, Inc., and I am competent to make this affidavit. The information set forth in the foregoing answers to Petitioner's interrogatories (1) is true and correct based on my own personal knowledge, or (2) is true and correct to the best of my knowledge, information, and belief, because it has been collected under my direction and made available to me by agents of Boi Na Braza, whom I believe to be reliable and whom I know to have personal knowledge of the facts collected. On this basis, I am authorized to make this affidavit for and on behalf of Boi Na Braza in this proceeding.



Jonas Matheus  
Secretary  
Boi Na Braza Holdings, LLC

Cancellation No. 92047056

*Terra Sul Corporation v. Boi Na Brasa, Inc.*

**EXHIBIT C**

Offered by Terra Sul Corporation

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Terra Sul Corporation a/k/a	)	
Churrascaria Boi Na Brasa, Inc.,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Cancellation No. 92047056
	)	
Boi Na Braza, Inc.,	)	
	)	
Registrant.	)	

**OBJECTIONS AND RESPONSES TO PETITIONER TERRA SUL'S  
FIRST SET OF REQUESTS FOR ADMISSIONS**

To: Terra Sul Corporation a/k/a Churrascaria Boi Na Brasa, Inc., by and through its attorney of record, Eamon J. Wall, Patterson & Sheridan, LLP, 595 Shrewsbury Ave., Suite 100, Shrewsbury, New Jersey 07702.

Pursuant to Fed. R. Civ. P. 36 and the Trademark Trial and Appeal Board Manual of Procedure ("TBMP") Section 407.03, Registrant Boi Na Braza Holdings, LLC ("Boi Na Braza" or "Registrant"), registrant by assignment from Boi Na Braza, Inc., hereby submits these Objections and Responses to Petitioner Terra Sul's ("Terra Sul") First Set of Requests for Admission (No. 1-12) as follows:

**General Objections**

1. Boi Na Braza objects to Petitioner's Definitions and Instructions to the extent that they purport to impose a greater obligation on Boi Na Braza than is required by the Federal Rules of Civil Procedure or the TBMP.
2. Boi Na Braza objects to Petitioner's Definitions and Instructions and requests to the extent that they are vague and ambiguous.

3. Boi Na Braza objects to Petitioner's requests to the extent that they seek information protected by the attorney-client privilege and/or work product doctrine or any other applicable privilege or protection from discovery.

4. Boi Na Braza objects to Petitioner's requests to the extent that they seek information that is not within Boi Na Braza's possession, custody or control.

## **REQUEST FOR ADMISSIONS**

### **REQUEST NO. 1:**

Admit that Registrant's first use of the term "boi na braza" was on or after July 1, 1999.

### **RESPONSE:**

Denied.

### **REQUEST NO. 2:**

Admit that Registrant has never owned or operated a restaurant in the New Jersey area under the names "Boi Na Braza," "Boi Na Brasa" or "Churrascaria Boi Na Brasa."

### **RESPONSE:**

Boi Na Braza objects that the phrase "New Jersey area" is vague. Subject to the foregoing specific and general objections, and without waiving the same, Boi Na Braza admits that it has never owned or operated a restaurant under the names "Boi Na Braza," "Boi Na Brasa," or "Churrascaria Boi Na Brasa" in New Jersey.

### **REQUEST NO. 3:**

Admit that Registrant has never owned or operated a restaurant in the New York area under the names "Boi Na Braza," "Boi Na Brasa" or "Churrascaria Boi Na Brasa."

### **RESPONSE:**

Boi Na Braza objects that the phrase "New York area" is vague. Subject to the foregoing specific and general objections, and without waiving the same, Boi Na Braza admits that it has never owned or operated a restaurant under the names "Boi Na Braza," "Boi Na Brasa," or "Churrascaria Boi Na Brasa" in New York.

### **REQUEST NO. 4:**

Admit that Registrant has never operated a Brazilian-style churrascarian restaurant in the New Jersey area.



**RESPONSE:**

Boi Na Braza objects that the phrase "New Jersey area" is vague. Subject to the foregoing specific and general objections, and without waiving the same, Boi Na Braza admits that it has never operated a Brazilian-style churrascarian restaurant in New Jersey.

**REQUEST NO. 5:**

Admit that Registrant has never operated a Brazilian-style churrascarian restaurant in the New York area.

**RESPONSE:**

Boi Na Braza objects that the phrase "New York area" is vague. Subject to the foregoing specific and general objections, and without waiving the same, Boi Na Braza admits that it has never operated a Brazilian-style churrascarian restaurant in New York.

**REQUEST NO. 6:**

Admit that Petitioner used the terms "Churrascaria Boi Na Brasa" and "Boi Na Brasa" prior to Registrant's first use of the term "Boi Na Braza."

**RESPONSE:**

After reasonable inquiry, Boi Na Braza is unable to either admit or deny and therefore it denies this request.

**REQUEST NO. 7:**

Admit that Petitioner used the terms "Churrascaria Boi Na Brasa" and "Boi Na Brasa" in New Jersey prior to Boi Na Braza's registration of the term "Boi Na Braza" as a trademark.

**RESPONSE:**

After a reasonable inquiry, Boi Na Braza is unable to either admit or deny and therefore it denies this request.

**REQUEST NO. 8:**

Admit that the term “Braza” is a slang term for “things Brazilian” when translated from Portuguese to English.

**RESPONSE:**

Denied.

**REQUEST NO. 9:**

Admit that Registrant’s “Boi Na Braza” restaurant(s) do not serve food or food-related products imported directly from Brazil.

**RESPONSE:**

Denied, except that Registrant admits that it serves food products imported from Brazil through third parties.

**REQUEST NO. 10:**

Admit that Registrant’s “Boi Na Braza” restaurant(s) do not serve Ox or Ox-based beef directly imported from Brazil.

**RESPONSE:**

Admitted.

**REQUEST NO. 11:**

Admit that Registrant does not own any trademark or proprietary rights in the terms “churrascaria boi na brasa” and/or “boi na brasa.”

**RESPONSE:**

Denied.

**REQUEST NO. 12:**

Admit that Registrant does not seek to own any trademark or proprietary rights in the terms “churrascaria boi na brasa” and/or “boi na brasa.”

**RESPONSE:**

Denied.

Dated: 8.7.2007

Respectfully submitted,

BOI NA BRAZA HOLDINGS, LLC

By: Remy M. Davis

Herbert J. Hammond

Deborah L. Lively

Remy M. Davis

THOMPSON & KNIGHT LLP

1700 Pacific Avenue

Suite 3300

Dallas, Texas 75201

(214) 969-1781

(214) 969-1751 (Fax)

Attorneys for Registrant

Boi Na Braza Holdings, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Request for Admissions is being served upon Petitioner's attorney of record, Eamon J. Wall, by certified mail, return receipt requested, on this 1<sup>st</sup> day of August, 2007, in an envelope addressed to:

Eamon J. Wall  
Patterson & Sheridan, LLP  
595 Shrewsbury Avenue, Suite 100  
Shrewsbury, New Jersey 07702

Remy M. Davis  
Remy M. Davis

Cancellation No. 92047056

*Terra Sul Corporation v. Boi Na Brasa, Inc.*

**EXHIBIT D**

Offered by Terra Sul Corporation

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Terra Sul Corporation a/k/a	)	
Churrascaria Boi Na Brasa,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Cancellation No. 92047056
	)	
Boi Na Braza, Inc.,	)	
	)	
Registrant.	)	

**OBJECTIONS AND ANSWERS TO PETITIONER TERRA SUL'S  
SECOND SET OF INTERROGATORIES (NOS. 26-50) AND REQUESTS FOR  
ADMISSION (NOS. 13-21) TO REGISTRANT BOI NA BRAZA**

To: Terra Sul Corporation a/k/a Churrascaria Boi Na Brasa, by and through its attorney of record, Eamon J. Wall, Patterson & Sheridan, LLP, 595 Shrewsbury Ave., Suite 100, Shrewsbury, New Jersey 07702.

Pursuant to Federal Rules of Civil Procedure 33 and 36 and the Trademark Trial and Appeal Board Manual of Procedure ("TBMP") Sections 405.04 and 407.03, Registrant Boi Na Braza, Inc. ("Registrant" or "Boi Na Braza") submits these Objections and Answers to Petitioner Terra Sul's ("Terra Sul's") Second Set of Interrogatories and Requests for Admission.

**General Objections**

1. Boi Na Braza objects to the Definitions and Instructions and the Interrogatories and Requests for Admission to the extent that they purport to impose burdens and obligations on Boi Na Braza greater than those imposed by the Federal Rules of Civil Procedure or the TBMP.

2. Boi Na Braza objects to each of Terra Sul's Interrogatories and Requests for Admission to the extent that they seek information protected by the attorney-client privilege and/or work product doctrine, or any other applicable privilege or protection from discovery.

3. All responses and objections contained herein are based only upon information and documents which are presently available to and specifically known to Boi Na Braza after conducting a reasonable and diligent investigation.

4. Each and all of these General Objections are hereinafter incorporated by reference in response to the Interrogatories and Requests for Admission below.



**PETITIONER'S SECOND SET OF DISCOVERY REQUESTS****REQUEST FOR ADMISSION NO. 13:**

Admit that Registrant's first use of the term "boi na braza" was on or after June 24, 1999.

**ANSWER:**

Denied.

**INTERROGATORY NO. 26:**

If your answer to Admission No. 13 is not unequivocally "admitted," identify all evidence supporting any use of the term "boi na braza" by Registrant prior to June 24, 1999.

**ANSWER:**

Boi Na Braza objects to this interrogatory as it seeks information that is protected by the attorney-client privilege and/or work product doctrine. Subject to the foregoing specific and general objections, and without waiving the same, Boi Na Braza responds that in the second half of 1998, Jonas Matheus, Julio Matheus and Joseph Matheus (the "Matheus Brothers") researched and chose this name for their restaurant business and purchased land to build their first restaurant.

**REQUEST FOR ADMISSION NO. 14:**

Admit that Registrant's first use of the term "boi na braza" was on or after June 1, 1999.

**ANSWER:**

Denied.

**INTERROGATORY NO. 27:**

If your answer to Admission No. 14 is not unequivocally "admitted," identify all evidence supporting any use of the term "boi na braza" by Registrant prior to June 1, 1999.

**ANSWER:**

Boi Na Braza objects to this interrogatory as it seeks information that is protected by the attorney-client privilege and/or work product doctrine. Subject to the foregoing specific and general objections, and without waiving the same, Boi Na Braza responds that in the second half of 1998, the Matheus Brothers researched and chose this name for their restaurant business and purchased land to build their first restaurant.

**REQUEST FOR ADMISSION NO. 15:**

Admit that the term "boi na braza" was first used in connection with Registrant's goods and services on July 19, 1999.

**ANSWER:**

Denied.

**REQUEST FOR ADMISSION NO. 16:**

Admit that the term "boi na braza" was first used in interstate commerce in connection with Registrant's goods and services on September 11, 2000.

**ANSWER:**

Denied.

**INTERROGATORY NO. 28:**

Identify the relevant and typical consumer of Registrant's goods and services.

**ANSWER:**

Boi Na Braza objects to this interrogatory as it seeks information that is protected by the attorney-client privilege and/or work product doctrine. Boi Na Braza further objects that the phrase "relevant and typical consumer" is vague and ambiguous. Subject to the foregoing general and specific objections, and without waiving the same, Boi Na Braza responds that members of the United States general public patronize its restaurant.

**INTERROGATORY NO. 29:**

In conjunction with your response to Interrogatory No. 28, identify and describe what the term "braza" means to the relevant and typical consumer of Registrant's goods and services.

**ANSWER:**

Boi Na Braza objects to this interrogatory as it implies that the relevant consumer is Portuguese-speaking and able to translate the phrase "boi na braza" into English. Boi Na Braza further objects to this interrogatory as it seeks information which Registrant has no way of knowing. Subject to the foregoing general and specific objections, Boi Na Braza maintains that members of the United States general public patronize its restaurant who, with rare exceptions, are not likely to speak Portuguese. Boi Na Braza therefore responds that the term "braza" likely has no meaning to members of the United States general public who patronize its restaurant.

**REQUEST FOR ADMISSION NO. 17:**

Admit that the ordinary consumer of Registrant's goods and services may understand the term "braza" to mean "things Brazilian" or relating to Brazil.

**ANSWER:**

Denied.

**INTERROGATORY NO. 30:**

If your answer to Admission No. 17 is not unequivocally "admitted," state the basis for Registrant's answer to Admission No. 17 and identify any and all evidence supporting

Registrant's contention that the ordinary consumer would not understand the term "brazza" to mean "things Brazilian" or relating to Brazil.

**ANSWER:**

Boi na Braza objects to this interrogatory as the term "ordinary consumer" is vague and ambiguous. Subject to the foregoing specific and general objections, and without waiving the same, Boi Na Braza responds that the members of the United States general public who patronize Registrant's restaurants are generally not Portuguese-speaking and therefore do not understand the term "brazza" to have any meaning, nor do they understand it to mean "things Brazilian" or relating to Brazil. Furthermore, the Matheus Brothers are each founders of Boi Na Braza and each is a native Brazilian and a fluent speaker of the Portuguese language. As fluent speakers of the language, the Matheus Brothers do not understand the translation of the word "brazza" from Portuguese to English to be "things Brazilian" or relating to Brazil. Moreover, Maria A. Laporte, a professional certified translator, member of the American Translators Association, has certified that the translation of "Boi Na Braza," from Portuguese to English, is "Ox in ember" or "Ox on hot coal." According to Ms. Laporte, the correct spelling of the word "Braza" in Portuguese is with an "s" and not a "z."

**REQUEST FOR ADMISSION NO. 18:**

Admit that the domain name <boinabrazza.com> was originally registered on June 26, 2000.

**ANSWER:**

Admitted.

**INTERROGATORY NO. 31:**

Describe in detail, and identify all evidence supporting your answer, all of the facts and circumstances concerning Registrant's adoption of the term "boi na brazza" as a potential trademark and all the reasons for the adoption of "boi na brazza" as a trademark for Registrant's goods or services.

**ANSWER:**

Boi Na Braza objects to this interrogatory as it seeks information that is protected by the attorney-client privilege and/or work doctrine. Further, Boi Na Braza objects to this interrogatory on the basis that it has been sufficiently addressed in Boi Na Braza's Objections and Answers to Petitioner Terra Sul's First Set of Interrogatories. Subject to the foregoing specific and general objections and without waiving the same, Boi Na Braza responds that the term "boi na brazza" is a well known term that is used often in Brazil. Based on their knowledge of term from its use in Brazil, the Matheus Brothers chose this name for their restaurant business and began using this name for the business as such at least as early as July 1, 1999. The Matheus Brothers changed the "s" to a "z" to give the name more distinctiveness.

**INTERROGATORY NO. 32:**

Identify all types and forms of marketing activity or advertising in commerce by Registrant using the mark "boi na brazza" in conjunction with Registrant's goods and services from 1999 to the present time.

**ANSWER:**

Boi Na Braza objects to this interrogatory as it is overly broad and unduly burdensome. Further, Boi Na Braza objects to this interrogatory on the basis that it has been sufficiently addressed in Boi Na Braza's Objections and Answers to Petitioner Terra Sul's First Set of Interrogatories. Subject to the foregoing specific and general objections and without waiving the same, Boi Na Braza responds that it has marketed and advertised in numerous magazines and publications that are circulated throughout the entire United States and internationally, as well as on its website, located at [www.boinabraza.com](http://www.boinabraza.com). Boi Na Braza has long engaged the services of Wellspring & Associates to handle the majority of such marketing and advertising efforts on its behalf. Specifically, its advertisements are placed in American Way magazine and Delta Sky magazine, as well as in publications that are local to Boi Na Braza's Dallas, Texas and Cincinnati, Ohio restaurant locations. There is also advertising local to a restaurant in Atlanta, Georgia, which is a licensee of the "BOI NA BRAZA" trademark.

**INTERROGATORY NO. 33:**

For each of the types and forms of advertising identified in your answer to Interrogatory No. 32, identify the date, time and place of each marketing activity or advertisement.

**ANSWER:**

Boi Na Braza objects to this interrogatory as it is overly broad and unduly burdensome. Further, Boi Na Braza objects to this interrogatory on the basis that it has been sufficiently addressed in Boi Na Braza's Objections and Answers to Petitioner Terra Sul's First Set of Interrogatories and Boi Na Braza's Objections and Answer to Petitioner's First Set of Requests for Production. Subject to the foregoing specific and general objections, and without waiving the same, Boi Na Braza responds that these advertisements have been continuous and ongoing since at least as early as July 1, 1999 and have been principally conducted through the services of Wellspring & Associates. Boi Na Braza directs Petitioner's attention to documents already produced pursuant to Petitioner Terra Sul's Request for Production No. 7.

**INTERROGATORY NO. 34:**

For each of the types and forms of advertising identified in your answer to Interrogatory No. 32, identify the amount of money spent by Registrant on each marketing activity or advertisement.

**ANSWER:**

Boi Na Braza objects to this interrogatory as it is overly broad and unduly burdensome. Further, Boi Na Braza objects to this interrogatory on the basis that it has been sufficiently addressed in Boi Na Braza's Objections and Answers to Petitioner Terra Sul's First Set of Interrogatories and Boi Na Braza's Objections and Answer to Petitioner's First Set of Requests for Production. Subject to the foregoing specific and general objections, and without waiving the same, Boi Na Braza responds that it has spent in excess of three million U.S. dollars (\$3,000,000.00 USD) in advertising its "BOI NA BRAZA" mark through the various means of advertisements. Boi Na Braza directs Petitioner's attention to documents already produced pursuant to Petitioner Terra Sul's Request for Production No. 7.

**REQUEST FOR ADMISSION NO. 19:**

Admit that there is no evidence of any actual confusion by the relevant public concerning Petitioner's use of the terms "Churrascaria Boi Na Braza" or "Boi Na Braza" in relation to Registrant's mark "boi na braza."

**ANSWER:**

Denied.

**INTERROGATORY NO. 35:**

If your answer to Admission No. 19 is not unequivocally "admitted," identify all instances of alleged actual confusion by the relevant public and identify all evidence in support thereof.

**ANSWER:**

Boi Na Braza objects to this interrogatory as it seeks information that is subject to the attorney-client privilege and/or work product doctrine. Subject to the foregoing specific and general objections and without waiving the same, Boi Na Braza responds that on several occasions, members of its staff at the Atlanta, Georgia and Dallas, Texas locations were approached by consumers claiming to have dined at Boi Na Braza's restaurant in New Jersey. When the staff informed the consumers that there was no related restaurant in New Jersey, some consumers claimed that staff from the New Jersey restaurant claimed that there was a relationship between the restaurants.

**INTERROGATORY NO. 36:**

If your answer to Admission No. 19 is not unequivocally "admitted," identify each of the members of the relevant public that are allegedly confused, when the alleged confusion occurred, and where the alleged confusion occurred.

**ANSWER:**

Boi Na Braza objects to this interrogatory as it seeks information that is subject to the attorney-client privilege and/or work product doctrine. Subject to the foregoing specific and general objections and without waiving the same, Boi Na Braza responds that the members of the general public that were confused were not regular customers and names were not recorded. The instances of confusion occurred between the years of 2003 and 2006 at the Atlanta, Georgia and Dallas, Texas locations of the Boi Na Braza restaurants.

**INTERROGATORY NO. 37:**

Identify the physical location of all current and/or previously-existing restaurants or other entities associated with or identified by Registrant's mark.

**ANSWER:**

Boi Na Braza  
4025 William D. Tate  
Grapevine, Texas 76051

Boi Na Braza

441 Vine Street  
Cincinnati, Ohio 45202

Boi Na Braza  
3149 E Shadowlawn Ave NE  
Atlanta, Georgia 30305-2405

**REQUEST FOR ADMISSION NO. 20:**

Admit that Registrant never owned, operated or controlled any restaurant or other entity associated with or identified by Registrant's mark "boi na braza" in the State of New Jersey.

**ANSWER:**

Admitted.

**INTERROGATORY NO. 38:**

If your answer to Admission No. 20 is not unequivocally "admitted," identify each restaurant or other entity associated with or identified by Registrant's mark "boi na braza" in the State of New Jersey.

**ANSWER:**

**REQUEST FOR ADMISSION NO. 21:**

Admit that Registrant has never owned, operated or controlled any restaurant or other entity associated with or identified by Registrant's mark "boi na braza" in the State of New York.

**ANSWER:**

Admitted.

**INTERROGATORY NO. 39:**

If your answer to Admission No. 21 was not unequivocally "admitted," identify each restaurant or other entity associated with or identified by Registrant's mark "boi na braza" in the State of New York.

**ANSWER:**

**INTERROGATORY NO. 40:**

Identify any current or previously-existing plans or intentions by Registrant to open or operate a restaurant in New Jersey using the "boi na braza" mark, and identify all evidence supporting any such plans or intentions.

**ANSWER:**

Subject to the foregoing general objections, and without waiving the same, Boi Na Braza responds that it has no definite plans or intentions to open or operate a restaurant in New Jersey using the "boi na braza" mark.

**INTERROGATORY NO. 41:**

Identify any current or previously-existing plans or intentions by Registrant to open or operate a restaurant in New York using the "boi na braza" mark, and identify all evidence supporting any such plans or intentions.

**ANSWER:**

Subject to the foregoing general objections, and without waiving the same, Boi Na Braza responds that it intends to open a restaurant in New York under the "boi na braza" mark in the future.

**INTERROGATORY NO. 42:**

Identify any and all marketing activity or advertisements directed to the State of New Jersey by Registrant related to Registrant's restaurants or related entities and using the mark "boi na braza" in connection therewith.

**ANSWER:**

Boi Na Braza objects to this interrogatory as it is overly broad and unduly burdensome. Subject to the foregoing specific and general objections, and without waiving the same, Boi Na Braza responds that its advertising is both national and global in nature. Specifically, its advertisements are placed in American Way magazine and Delta Sky magazine, which have a circulation that covers the entire United States. Its website, located at [www.boinabraza.com](http://www.boinabraza.com), may be viewed around the world.

**INTERROGATORY NO. 43:**

Identify any and all marketing activity or advertisements directed to the State of New York by Registrant relating to Registrant's restaurants or related entities and using the mark "boi na braza" in connection therewith.

**ANSWER:**

Boi Na Braza objects to this interrogatory as it is overly broad and unduly burdensome. Subject to the foregoing specific and general objections, and without waiving the same, Boi Na Braza responds that its advertising is both national and global in nature. Specifically, its advertisements are placed in American Way magazine and Delta Sky magazine, which have a circulation that covers the entire United States. Its website, located at [www.boinabraza.com](http://www.boinabraza.com), may be viewed around the world.

**INTERROGATORY NO. 44:**

Identify all evidence supporting Registrant's contention that "Boi Na Braza believes that Terra Sul was not only aware of its restaurant services long before Boi Na Braza initiated any contact with Mr. Farid Saleh but in fact implied a false association with Boi Na Braza's organization" as stated in Registrant's Response to Interrogatory Nos. 8-12, dated August 7, 2007.

**ANSWER:**

Boi Na Braza objects to this interrogatory as it seeks information that is protected by the attorney-client privilege and/or work product doctrines. Subject to the foregoing specific and general objections, and without waiving the same, Boi Na Braza directs Petitioner's attention to its Answer to Interrogatory Nos. 35 and 36 above. Boi Na Braza further responds that based on the comments of consumers that have approached the staff of the Atlanta, Georgia and Dallas, Texas Boi Na Braza restaurant locations as outlined above as early as 2003, Boi Na Braza believes that Terra Sul was aware of its restaurant services long before Boi Na Braza initiated any contact with Mr. Farid Saleh and in fact implied a false association with Boi Na Braza's organization.

**INTERROGATORY NO. 45:**

If your answer to any of Admission Nos. 13-21 is not unequivocally "admitted," state the basis for, and identify all facts and evidence, supporting your denial of each individual Request for Admission.

**ANSWER:**

Boi Na Braza objects to this interrogatory as it seeks information that is protected by that attorney-client privilege and/or work product doctrine. Boi Na Braza further objects to the extent that this interrogatory seeks information relating to an admission request was objected to and, as to any such request, objects to providing such information for the same reason the request was objected to. Subject to the foregoing specific and general objections, and without waiving the same, Boi Na Braza responds as follows:

Answering to Admission Requests No. 13-17, 19:

Request No. 13: Denied because Registrant's first use of the term "boi na braza" was prior to June 24, 1999.

Request No. 14: Denied because Registrant's first use of the term "boi na braza" was prior June 1, 1999.

Request No. 15: Denied because the term "boi na braza" was first used in connection with Boi Na Braza's goods and services at least as early as July 19, 1999.

Request No. 16: Denied because the term "boi na braza" was first used in interstate commerce in connection with Boi Na Braza's goods and services prior to September 11, 2000.

Request No. 17: Denied because the ordinary consumer of Boi Na Braza's goods and services does not understand the term "braza" to mean "things Brazilian" or relating to Brazil.

Request No. 19: Denied because there have been instances of actual consumer confusion.

**INTERROGATORY NO. 46:**

If you contend that you have any trademark rights or proprietary interests in the terms "churrascaria boi na braza" and/or "boi na braza," state the basis for your contention and identify all evidence in support thereof.

**ANSWER:**



Subject to the foregoing general objections, and without waiving the same, Boi Na Braza responds that it is the owner of U.S. Registration No. 2,534,608 for the mark BOI NA BRAZA in connection with restaurant services. The term "churrascaria" is purely descriptive of the services and the term "boi na brasa" is a phonetic equivalent to the mark BOI NA BRAZA. The registration is prima facie evidence of the validity of the mark, of the registration of the mark, of Boi Na Braza's ownership of the mark and of Boi Na Braza's exclusive right to use the mark in commerce on or in connection with the services specified in the registration.

**INTERROGATORY NO. 47:**

If you seek to own any trademark rights or proprietary interests in the terms "churrascaria boi na brasa" and/or "boi na brasa," identify all previous or planned attempts to acquire and/or register such rights.

**ANSWER:**

Boi Na Braza objects to this interrogatory as it seeks information that is subject to the attorney-client privilege and/or work product doctrine. Subject to the foregoing specific and general objections, and without waiving the same, Boi Na Braza responds that through its ownership of Registration No. 2,534,608 for the mark BOI NA BRAZA, it owns trademark rights or proprietary interests in the terms "churrascaria boi na brasa" and/or "boi na brasa" given the purely descriptive nature of the word "churrascaria" and the phonetic equivalence of the term "boi na brasa" and Boi Na Braza's registration for BOI NA BRAZA.

**INTERROGATORY NO. 48:**

If you contend that Petitioner is improperly using the terms "churrascaria boi na brasa" and/or "boi na brasa" to identify its restaurant business, state the basis of your contention and identify all evidence in support thereof.

**ANSWER:**

Boi Na Braza objects to this interrogatory as it seeks information that is subject to the attorney-client privilege and/or work product doctrine. Subject to the foregoing specific and general objections, and without waiving the same, Boi Na Braza responds that it is the owner of U.S. Reg. No. 2,534,608 for the mark BOI NA BRAZA. The registration is prima facie evidence of the validity of the mark, of the registration of the mark, of Boi Na Braza's ownership of the mark and of Boi Na Braza's exclusive right to use the mark in commerce on or in connection with the services specified in the registration. Although Petitioner claims rights in a confusingly similar mark, Petitioner has yet to establish ownership of prior rights in such mark. Further, Boi Na Braza is of the belief that Petitioner has claimed an association with Boi Na Braza to members of the general public, when in fact no such association exists.

**INTERROGATORY NO. 49:**

If you contend that Registrant has priority of use or superior rights over Petitioner to use the terms "churrascaria boi na brasa" and/or "boi na brasa" in the State of New Jersey, state the basis for your contention and identify all evidence in support thereof.

**ANSWER:**

Boi Na Braza objects to this interrogatory as it seeks information that is subject to the attorney-client privilege and/or work product doctrine. Subject to the foregoing specific and general objections, and without waiving the same, Boi Na Braza responds that it is the owner of U.S. Reg. No. 2,534,608 for the mark BOI NA BRAZA. The registration is prima facie evidence of the validity of the mark, of the registration of the mark, of Boi Na Braza's ownership of the mark and of Boi Na Braza's exclusive right to use the mark in commerce on or in connection with the services specified in the registration. Although Petitioner claims rights in a confusingly similar mark, Petitioner has yet to establish ownership of prior rights in such mark.

**INTERROGATORY NO. 50:**

If you contend that Registrant has priority of use or superior rights over Petitioner to use the terms "churrascaria boi na brasa" and/or "boi na brasa" in the State of New York, state the basis of your contention and identify all evidence in support thereof.

**ANSWER:**

Boi Na Braza objects to this interrogatory as it seeks information that is subject to the attorney-client privilege and/or work product doctrine. Subject to the foregoing specific and general objections, and without waiving the same, Boi Na Braza responds that it is the owner of U.S. Reg. No. 2,534,608 for the mark BOI NA BRAZA. The registration is prima facie evidence of the validity of the mark, of the registration of the mark, of Boi Na Braza's ownership of the mark and of Boi Na Braza's exclusive right to use the mark in commerce on or in connection with the services specified in the registration. Although Petitioner claims rights in a confusingly similar mark, Petitioner has yet to establish ownership of prior rights in such mark.

Dated: June 13, 2008

Respectfully submitted,

BOI NA BRAZA INC.

By: Remy M. Davis

Herbert J. Hammond  
Deborah L. Lively  
Remy M. Davis  
THOMPSON & KNIGHT LLP  
1700 Pacific Avenue  
Suite 3300  
Dallas, Texas 75201  
(214) 969-1781  
(214) 969-1751 (Fax)

Attorneys for Boi Na Braza  
Registrant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Response to Petitioner Terra Sul's Second Set of Interrogatories and Requests for Admission is being served upon Petitioner's attorney of record, Eamon J. Wall, by certified mail, return receipt requested, on this 13<sup>th</sup> day of June, 2008, in an envelope addressed to:

Eamon J. Wall  
Patterson & Sheridan, LLP  
595 Shrewsbury Avenue, Suite 100  
Shrewsbury, New Jersey 07702

Remy M. Davis  
Remy M Davis

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Terra Sul Corporation a/k/a  
Churrascaria Boi Na Braza

Petitioner,

v.

Boi Na Braza, Inc.,

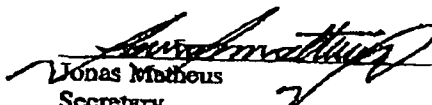
Respondent.

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Cancellation No. 92047056

**VERIFICATION**

I am over the age of eighteen years. I am Secretary of Registrant Boi Na Braza, Inc. ("Boi Na Braza"), and I am competent to make this affidavit. The information set forth in the foregoing answers to Petitioner's interrogatories (1) is true and correct based on my own personal knowledge, or (2) is true and correct to the best of my knowledge, information, and belief, because it has been collected under my direction and made available to me by agents of Boi Na Braza, whom I believe to be reliable and whom I know to have personal knowledge of the facts collected. On this basis, I am authorized to make this affidavit for and on behalf of Boi Na Braza in this proceeding.

  
Jonas Mathews  
Secretary  
Boi Na Braza, Inc.

Cancellation No. 92047056

*Terra Sul Corporation v. Boi Na Brasa, Inc.*

**EXHIBIT E**

Offered by Terra Sul Corporation

RJ-CH



# The State of Texas

## Secretary of State

### CERTIFICATE OF INCORPORATION OF

B31 NA BRAZA, INC.  
CHARTER NUMBER 01540801

THE UNDERSIGNED, AS SECRETARY OF STATE OF THE STATE OF TEXAS,  
HEREBY CERTIFIES THAT THE ATTACHED ARTICLES OF INCORPORATION FOR THE  
ABOVE NAMED CORPORATION HAVE BEEN RECEIVED IN THIS OFFICE AND ARE  
FOUND TO CONFORM TO LAW.

ACCORDINGLY, THE UNDERSIGNED, AS SECRETARY OF STATE, AND BY VIRTUE  
OF THE AUTHORITY VESTED IN THE SECRETARY BY LAW, HEREBY ISSUES THIS  
CERTIFICATE OF INCORPORATION.

ISSUANCE OF THIS CERTIFICATE OF INCORPORATION DOES NOT AUTHORIZE  
THE USE OF A CORPORATE NAME IN THIS STATE IN VIOLATION OF THE RIGHTS OF  
ANOTHER UNDER THE FEDERAL TRADEMARK ACT OF 1946, THE TEXAS TRADEMARK LAW,  
THE ASSUMED BUSINESS OR PROFESSIONAL NAME ACT OR THE COMMON LAW.

DATED JUNE 24, 1999

EFFECTIVE JUNE 24, 1999



A handwritten signature in cursive script, reading "Elton Bornei".

Elton Bornei, Secretary of State

BNB 000001

# EXHIBIT F

ESTTA Tracking number: **ESTTA281214**

Filing date: **04/30/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92047056
Party	Plaintiff TERRA SUL CORPORATION A/K/A CHURRASCARIA BOI NA BRASA
Correspondence Address	EAMON J. WALL WALL & TONG, LLP 595 SHREWSBURY AVENUE, SUITE 100 SHREWSBURY, NJ 07702 UNITED STATES ewall@walltong.com
Submission	Rebuttal Brief
Filer's Name	Eamon J Wall
Filer's e-mail	ewall@walltong.com, lcrater@walltong.com
Signature	/EJ Wall/
Date	04/30/2009
Attachments	TSUL_0002PetitionerReply.pdf ( 14 pages )(494446 bytes )



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Terra Sul Corporation a/k/a  
Churrascaria Boi Na Brasa

Petitioner

V.

Boi Na Braza, Inc.,

Registrant.

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Cancellation No. 92047056

**PETITIONER'S REPLY TO RESPONDENT'S**  
**FINAL BRIEF ON THE MERITS**

Pursuant to 37 C.F.R. § 2.128(a) and Rule 801.02(c) of the Trademark Trial and Appeal Board Manual of Procedure ("TBMP"), Petitioner Terra Sul Corporation, a/k/a Churrascaria Boi Na Brasa (hereinafter "Terra Sul" or "Petitioner") hereby submits its Reply Brief for consideration by the Board. Petitioner maintains its contention that the federal registration of the mark BOI NA BRASA (No. 2,534,608) should be cancelled. Petitioner's factual and legal support for this contention is set forth as follows:

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I.

**INDEX OF CASES**

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## **II.**

### **DESCRIPTION OF THE RECORD**

The evidence of record consists of the documents and materials relied upon in Petitioner's and Respondent's respective Trial Briefs and the evidence previously made of record and incorporated by reference herein.

### III.

#### **REPLY TO RESPONDENT'S TRIAL BRIEF**

Registrant Boi Na Braza, Inc. (“Boi Na Braza” or “Registrant”) submitted its response to Petitioner’s Trial Brief on April 15, 2009. Registrant’s Brief seeks to distract the Board from three very simple facts: First, while Registrant hints at allegedly inconsistent corporate filings and individual statements, Registrant has no evidence that Petitioner has ever abandoned its continual use of the mark CHURRASCARIA BOI NA BRASA in conjunction with Petitioner’s restaurant business in New Jersey. Secondly, Registrant was not the first to conceive and use the mark “Boi Na Braza” to be used in conjunction with restaurant services. Lastly, and most importantly, Registrant cannot rebut the fact that its mark BOI NA BRAZA does not operate as a trademark because it fails to identify and distinguish the source of the goods of Registrant from those of others, namely Petitioner.

**1. Petitioner has never abandoned or ceased use of its service mark CHURRASCARIA BOI NA BRASA.**

Churrascaria Boi Na Braza Corp., the predecessor entity to Terra Sul Corp., was formed in early 1996. It was later incorporated by the State of New Jersey on March 28, 1996 and thereafter began conducting business via the restaurant known as “Churrascaria Boi Na Braza” located at 70 Adams Street in Newark, New Jersey. *See* Exhibits A-1, A-2 and A-3. Registrant has not – and cannot – dispute these facts. Contrary to Registrant’s claims, Petitioner’s evidence and testimony supporting “first use” and priority are fully supported by documents, including government certifications issued by the State of New Jersey. Correspondingly, as of March 28, 1996, Registrant admittedly was not conducting business in the United States and had yet to even conceive of the name “Boi Na Braza.”

Farid Saleh was the President of Churrascaria Boi Na Brasa Corp.. Exhibit A, at page 6-7.<sup>1</sup> Mr. Saleh is also currently the President of Terra Sul Corp. Exhibit A-18. The manner of use of Petitioner's BOI NA BRASA service mark has not varied in any way after Mr. Saleh formed Terra Sul Corp. in 1999 and transferred the rights to the mark to Terra Sul. Exhibit A, page 51, lines 16-25. Mr. Saleh is the common link between the two entities. There is also a consistent chain of ownership of the service mark CHURRASCARIA BOI NA BRASA.

Registrant, however, seeks to undermine the continuity of Petitioner's use of the mark. First, Registrant claims that under New Jersey law, there was not a proper transfer of trademark rights between Churrascaria Boi Na Brasa Corp. and Terra Sul Corp. Registrant cites to the New Jersey statutes on trademark law and suggests that any assignment of trademark rights must be "by instruments in writing..."<sup>2</sup> Petitioner does not dispute that this is an accurate reading of the particular statute. This provision, however, is for *registered* trademarks. Petitioner instead relies upon its common law rights in its CHURRASCARIA BOI NA BRASA mark. The New Jersey statute on trademarks clearly reads that "[n]othing herein shall adversely affect the rights or the enforcement of rights in marks acquired in good faith at any time at common law."<sup>3</sup> Furthermore, the statute includes a provision on the abandonment of marks, common law or otherwise. To "abandon" a mark, the owner must:

(1) When its use has been discontinued with intent not to resume that use. Intent not to resume may be inferred from circumstances. Nonuse for two consecutive years shall constitute prima facie evidence of abandonment. (2) When any course of conduct of the owner, including acts of omission as well as commission, causes the mark to lose its significance as a mark.<sup>4</sup>

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<sup>1</sup> See also Exhibit A-1 (with Farid Saleh identified as the registered agent).

<sup>2</sup> See Registrant's Br. at 7.

<sup>3</sup> N.J. STAT. ANN. § 56:3-13.13 (1995).

<sup>4</sup> *Id.* at § 56:3-13.1a

Neither Petitioner, nor Farid Saleh in his individual capacity, ever intended to abandon any rights to the CHURRASCARIA BOI NA BRASA mark. The statute also prevents Registrant from “inferring” any such intent to abandon. Moreover, there has never been a discontinuity in the use of the mark, much less a two-year gap. Lastly, there is no evidence that Petitioner’s common law mark has ever lost significance as a trademark. Registrant has offered no evidence to the contrary.

Instead, Registrant seeks to show a quasi-abandonment of Petitioner’s mark because of an alleged failure to maintain corporate formalities. This attack, however, undermines the purpose of trademarks – which is to identify to the *consuming public* the proper source of goods and services.<sup>5</sup> Furthermore, “[a] trademark owner has a property right only insofar as is necessary to prevent customer confusion as to who produced the goods and to facilitate differentiation of the trademark owner’s goods.”<sup>6</sup> Petitioner’s service mark has been an identification of the goods/services associated with the “Churrascaria Boi Na Brasa” restaurant located at 70 Adams Street in Newark, New Jersey since 1996. In contrast, the existence of U.S. Registration No. 2,534,608 (Registrant’s mark) will only serve to confuse consumers as to the source of goods and services. Registrant’s attempt at misdirecting the Board from the central issue does not change the significance of Petitioner’s mark in the eyes of the relevant public.

Meanwhile, Farid Saleh is a Portuguese-speaking Brazilian national.<sup>7</sup> Mr. Saleh is not a lawyer in any country. Mr. Saleh is neither an expert on trademark law nor corporate law.

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<sup>5</sup> See J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition § 2:1 (2008). “The interest of the public in not being deceived has been called the basic policy.” See also § 2:14. “Trademark law has many presumptions, assumptions and a few overriding public policies, but the central key is customer perception.”

<sup>6</sup> *Int’l Order of Job’s Daughters v. Lindeburg & Co.*, 633 F.2d 912, 208 U.S.P.Q. 718 (9<sup>th</sup> Cir. 1980), cert. denied, 452 U.S. 941, 69 L. Ed.2d 956, 101 S. Ct. 3086, 213 U.S.P.Q. 1056 (1981) (citing treatise).

<sup>7</sup> Both of Mr. Saleh’s depositions – the discovery deposition and the testimony deposition, respectively – were conducted with the assistance of a Portuguese-to-English translator.

Yet Registrant now seeks to exploit Mr. Saleh's lack of expertise and hold him to improper heightened standards of conduct. For example, Registrant points to the alternate-name registration filed by Mr. Saleh on behalf of Terra Sul in February 2007.<sup>8</sup> This alternative-name application was hastily filed in response to the threatening letter sent to Mr. Saleh by Registrant's corporate counsel in January 2007. Exhibit A-21. Further, while the face of the alternate-name application does (incorrectly) indicate that as of January 16, 2007, that Terra Sul Corp. (and Farid Saleh, individually) had not used the name "Churrascaria Boi Na Brasa" apart from the corporate name – the evidence in the record clearly shows otherwise. *See generally*, Exhibits A-15, A-18, A-20, and A-22. The Board can easily discern from the evidence that the mark CHURRASCARIA BOI NA BRASA was in continual use by from 1996 through the present day, that the use of this mark was controlled by Churrascaria Boi Na Brasa Corp. from 1996 (with Farid Saleh as the individual overseeing this use in his role as President), and that the use of this mark was controlled by Terra Sul as of January 1999 (again with Farid Saleh as the individual overseeing this use in his role as President).

Registrant also directs the Board's attention to an intent-to-use trademark application filed by Farid Saleh on behalf of Terra Sul. *See* Registrant's Exhibit C. Registrant claims this is evidence that Petitioner only had an "intent-to-use" the CHURRASCARIA BOI NA BRASA mark as of March 2002. Registrant, however, fails to note the distinction in the application. The actual application is for the mark "Churrascaria Boi Na Brasa **Corp.**" (emphasis added). This is not the mark made of issue by Petitioner in this proceeding. Thus, Registrant's Exhibit C is wholly irrelevant to the analysis of Petitioner's use of the CHURRASCARIA BOI NA BRASA service mark.

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<sup>8</sup> *See* Registrant's Br. at 9. *See also* Exhibit A-19.



Nevertheless, Registrant merely seeks to exploit Mr. Saleh's status as a non-attorney. Mr. Saleh did file the intent-to-use application as an individual and did not directly identify Terra Sul Corp. as the applicant. Saleh, however, *did* identify the applicant's address as "70 Adams St., Newark, New Jersey."<sup>9</sup> This is not Mr. Saleh's home address. Since 1996, the only building located at 70 Adams Street in Newark has been a restaurant – Churrascaria Boi Na Brasa.<sup>10</sup> This is a business address, which operates to show Mr. Saleh's intent to file on behalf of Terra Sul. Registrant's reliance on this particular documentary evidence does not disprove that Petitioner was the senior user of the mark nor does it prove that Petitioner has abandoned or discontinued use of its service mark.

In short, Registrant is grasping at straws and has no actual evidence to dispute that the restaurant identified as "Churrascaria Boi Na Brasa" and located at 70 Adams Street in Newark, New Jersey has been open for business since 1996 and is the source of goods and services identified by Petitioner's CHURRASCARIA BOI NA BRASA mark.

**2. Registrant is not the first to conceive of a BOI NA BRASA mark and Petitioner is the actual senior user and owner of any trademark rights.**

Registrant's Brief sets forth the demarcation line of "first use." Specifically, Registrant unambiguously admits that its first use of the BOI NA BRAZA mark (with a "z") was on July 19, 1999. Registrant therefore cannot claim any trademark rights pre-dating July 19, 1999. The senior user of a trademark is the one who is the first to use the mark in the United States – not just conceive of it.<sup>11</sup> Trademark rights grow out of use, not mere adoption of a name.<sup>12</sup> In this instance, Petitioner began using the mark in commerce shortly after Churrascaria Boi Na Brasa Corp. was incorporated in New Jersey on March 28, 1996. Petitioner has provided evidence of

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<sup>9</sup> See Registrant's Exhibit C.

<sup>10</sup> Exhibits A-2, A-20.

<sup>11</sup> *MNI Mgmt. Inc. v. Wine King, LLC*, 542 F. Supp. 2d 389, 405 (D. N.J. 2008) (emphasis added).

<sup>12</sup> *Id.*

advertisements – evidence of use of its mark in commerce – where these advertisements are dated September 1997. Exhibit A-15. Whatever Petitioner’s actual date of “first use” may be, Registrant cannot dispute that as of September 1997 it had not acquired any trademark rights in the marks “Boi Na Brasa” or “Boi Na Braza.”

Further, assuming, *arguendo*, that even if Terra Sul Corp. failed to properly acquire the rights to the goodwill associated with Churrascaria Boi Na Brasa Corp. and the CHURRASCARIA BOI NA BRASA service mark (as Registrant alleges), Terra Sul was nonetheless incorporated in New Jersey on January 19, 1999 and began doing business at the same location (70 Adams Street) at that time.<sup>13</sup> While the record lacks an advertisement in a newspaper for Petitioner between January and July 1999, there is overwhelming evidence that “Churrascaria Boi Na Brasa” was open as a restaurant in that timeframe and was using the service mark at issue to identify this restaurant.<sup>14</sup> For example, the State of New Jersey issued Terra Sul a Certificate of Authority with a “Tax Effective Date” of April 1, 1999.<sup>15</sup> Common sense dictates that the State could not collect taxes unless an actual business was in operation. Thus, even if the pre-1999 use by Churrascaria Boi Na Brasa Corp. is ignored, Terra Sul’s January 1999 and beyond uses of the mark pre-date Registrant’s admitted date of first use by at least three months and as much as *six months*.

Registrant’s defense is directed to the alleged lack of evidence transferring trademark rights from Churrascaria Boi Na Brasa Corp. to Terra Sul Corp. Registrant asserts there is no proof of an assignment or transfer of rights to Petitioner.<sup>16</sup> Registrant states that “ownership

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<sup>13</sup> See Exhibits A-18 and A-20. Furthermore, the advertisements identified by A-15 are entirely consistent in the use of the name and logo and show continued use from September 1997 through November 1999.

<sup>14</sup> *Id.*

<sup>15</sup> Exhibit A-20.

<sup>16</sup> See Registrant’s Br. at 7.

rights” can be transferred only by a written assignment or by “operation of law.”<sup>17</sup> Registrant, however, overlooks the fact that a transfer of the CHURRASCARIA BOI NA BRASA mark to Terra Sul *has* been made via an “operation of law.”

Various state laws have made allowances for a transfer of trademark rights between entities after a review of individual circumstances, such as a merger or inheritance of property rights.<sup>18</sup> Here, Terra Sul has acquired substantially all of the property and rights previously associated with Churrascaria Boi Na Brasa Corp. There is also a common ownership interest, namely Mr. Farid Saleh serving as President of both entities. Essentially, whether or not there has been a formal “merger” between the entities is immaterial. In this instance, at the very least the original entity (Churrascaria Boi Na Brasa Corp.) has acquiesced to the acquisition, ownership and use of the CHURRASCARIA BOI NA BRASA service mark by Terra Sul Corp. There is no evidence that the corporate entity “Churrascaria Boi Na Brasa Corp.” ever objected to Terra Sul’s use of the mark. Registrant cannot show otherwise. This acquiescence sets forth an implicit transfer of ownership of the mark to Terra Sul. Essentially, there has been a transfer of rights via “operation of law” and there has been continued use of the mark by Petitioner (and its successor entity) beginning in 1996.

Registrant is not the senior user. Petitioner is. Accordingly, Boi Na Braza, Inc.’s federal registration for BOI NA BRAZA should be cancelled.

**3. Registrant’s alleged mark does not serve as a trademark to the relevant public.**

Contrary to Registrant’s assertions, Terra Sul can – and has – established sufficient grounds for cancellation of the registration. Registrant is only entitled to a federal registration if

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<sup>17</sup> *Id.* (citing McCarthy at § 18).

<sup>18</sup> See generally, [http://www.sos.state.co.us/pubs/business/helpFiles/TDMK\\_TRF\\_IND\\_HELP.pdf](http://www.sos.state.co.us/pubs/business/helpFiles/TDMK_TRF_IND_HELP.pdf) (citing to Colorado Revised Statutes § 7-70-106 (rev. 2007) and stating that “Examples of a transferee succeeding to the rights and interests in the trademark by operation of law are a merger of business entities or inheritance.”)

its mark actually serves as a trademark. Here, however, Registrant's mark "[c]onsists of or comprises a mark which so resembles ... a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive." 15 U.S.C. § 1052(d). Accordingly, pursuant to 15 U.S.C. § 1064(3), Petitioner has a legitimate basis for cancelling the registration at issue.

BOI NA BRAZA fails to serve as a trademark because it does not signify to the relevant public (as defined by Registrant<sup>19</sup>) the actual source of the goods/services associated therewith and so resembles Petitioner's own service mark as to cause confusion in the marketplace. Additionally, as shown herein and previously in Petitioner's Trial Brief, Registrant is not the senior user.<sup>20</sup> Petitioner has been using its service mark since 1996. Registrant's confusingly similar mark was not in use in commerce until admittedly July 1999. As the first user of the mark in commerce, Petitioner has senior common law rights that supersede Boi Na Braza, Inc.'s rights. The user who first appropriates the mark obtains an enforceable right to exclude others from using it.<sup>21</sup> This would be Petitioner.

Also, the prior user of an unregistered mark is entitled to common law protection for its continued use of the mark in the areas of use that pre-date registration.<sup>22</sup> Petitioner Terra Sul is the owner of any rights that may be associated with the marks at issue. Registrant lacks any basis for asserting trademark rights that would be sufficient to maintain a federal registration.

Registrant cannot claim that its mark clearly identifies Boi Na Braza, Inc. as the proper source of goods/services associated with the mark. For example, while Petitioner has no

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<sup>19</sup> See Petitioner's Br. at 13. See also Petitioner's Exhibit D, Interrogatory No. 28.

<sup>20</sup> See Petitioner's Br. at 4-5.

<sup>21</sup> *Patsy's Italian Rest., Inc. v. Banas*, 508 F. Supp. 2d 194, 217 (E.D.N.Y. 2007).

<sup>22</sup> *Id.*

evidence of actual confusion in its geographic region (the tri-state area), Registrant has previously sworn that “on several occasions, members of its staff at the Atlanta, Georgia and Dallas, Texas locations were approached by consumers claiming to have dined at Boi Na Braza’s restaurant in New Jersey.” *See* Petitioner’s Br. at 12.<sup>23</sup> This simple admission undermines Registrant’s entire basis for claiming that its mark accurately distinguishes its goods/services from others. Registrant’s mark is incapable of serving as a trademark and should not be afforded the protections of a federal registration.

Petitioner has used its mark – and has not abandoned any use – since 1996. Furthermore, Registrant’s mark is also likely to confuse or deceive the relevant public. Petitioner Terra Sul has therefore shown by a preponderance of the evidence that it has superior rights in any trademark. U.S. Registration No. 2,534,608 should therefore be cancelled.

#### IV.

#### **CONCLUSION**

Petitioner has met its burden of proving, by a preponderance of the evidence, that Registrant’s mark BOI NA BRAZA is not eligible to maintain a federal registration and should be cancelled. First, Petitioner has provided evidence of use of its own CHURRASCARIA BOI NA BRASA service mark that pre-dates Registrant’s use by more than three years. Secondly, despite Registrant’s attempts to undermine Petitioner’s evidence of use, there is no evidence of abandonment or a lack of continued use by Petitioner. Petitioner’s testimonial evidence is corroborated by official documents and government certifications. Lastly, Registrant’s mark does not serve to distinguish its goods/services from those of Petitioner (and others). Petitioner therefore respectfully requests that the Board cancel U.S. Registration No. 2,534,608.

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<sup>23</sup> *See also* Exhibit D to Petitioner’s Br., Interrogatory No. 35.

Date: April 30, 2009

Respectfully submitted,



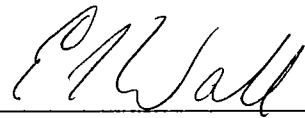
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COUNSEL FOR PETITIONER  
TERRA SUL CORPORATION, a/k/a  
CHURRASCARIA BOI NA BRASA

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of "PETITIONER'S REPLY TO RESPONDENT'S FINAL BRIEF ON THE MERITS" was served on the parties listed below, via First Class U.S. Mail on the 30<sup>th</sup> day of April 2009.

Herbert J. Hammond  
Deborah L. Lively  
Remy McElroy Davis  
Thompson & Knight LLP  
One Arts Plaza  
1722 Routh Street, Suite 1500  
Dallas, TX 75201



Eamon J. Wall

# EXHIBIT G

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

Mailed: June 12, 2009

**UNITED STATES PATENT AND TRADEMARK OFFICE**

**Trademark Trial and Appeal Board**

Terra Sul Corporation A/K/A Churrascaria Boi Na Brasa  
v.  
Boi Na Braza, Inc.

Cancellation No. 92047056

Eamon J. Wall of Wall & Tong, LLP for Terra Sul Corporation  
A/K/A Churrascaria Boi Na Brasa

Remy M. Davis of Thompson & Knight LLP for Boi Na Braza,  
Inc.

Before Quinn, Kuhlke and Wellington, Administrative  
Trademark Judges.

Opinion by Kuhlke, Administrative Trademark Judge:

Terra Sul Corporation A/K/A Churrascaria Boi Na Brasa,  
petitioner, has petitioned to cancel Registration No.  
2534608 owned by Boi Na Braza, Inc., respondent, issued on  
January 29, 2002 for the mark BOI NA BRAZA for restaurant  
services in International Class 42. The registration  
includes the following translation: The English translation  
of BOI NA BRAZA means OX IN EMBERS.



As grounds for cancellation petitioner asserts the claim of priority and likelihood of confusion under Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d). More specifically, petitioner alleges that respondent's mark BOI NA BRAZA, as used in connection with its services, so resembles petitioner's previously used mark BOI NA BRASA for restaurant services as to be likely to cause confusion, to cause mistake, or to deceive under Trademark Act Section 2(d).

In addition, petitioner alleges that respondent's mark is "merely descriptive or deceptively misdescriptive of them within the meaning of Section 2(e) of the Trademark Act, primarily geographically descriptive of them within the meaning of Section 2(e) of the Trademark Act, and/or primarily geographically deceptively misdescriptive of them within the meaning of Section 2(e) of the Trademark Act."<sup>1</sup> Petition to Cancel ¶ 6.

Respondent in its answer denied the salient allegations.<sup>2</sup>

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<sup>1</sup> In its brief, petitioner appears to limit its argument to mere descriptiveness and we consider any claims under Trademark Act Sections 2(e)(2) and 2(e)(3) to be waived.

<sup>2</sup> Respondent also asserted several affirmative defenses in its answer; however, respondent did not pursue these defenses in its brief and we consider them to have been waived.

### **EVIDENCE OF RECORD**

The evidence of record consists of the pleadings herein; the file of the registration sought to be cancelled; trial testimony of Mr. Farid Saleh, petitioner's owner and president, with related exhibits, taken by petitioner; respondent's discovery responses and an official record from the state of Texas submitted by petitioner under a notice of reliance; and the discovery deposition of Mr. Saleh with exhibits, and an official record from the state of New Jersey submitted by respondent under a notice of reliance.

### **STANDING**

As discussed below, petitioner has established trademark rights in the mark BOI NA BRASA as used in connection with restaurant services and has demonstrated a real interest in cancelling the registration for the mark BOI NA BRAZA. See *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023 (Fed. Cir. 1999); *Jewelers Vigilance Committee, Inc. v. Ullenberg Corp.*, 823 F.2d 490, 2 USPQ2d 2021 (Fed. Cir. 1987); *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185 (CCPA 1982). Thus, petitioner has established its standing.

### **PRIORITY/LIKELIHOOD OF CONFUSION**

The record shows and respondent does not dispute that the marks BOI NA BRASA and BOI NA BRAZA are similar, the

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restaurant services are identical and the trade channels overlap. In re E. I. du Pont de Nemours and Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In view thereof, we hold that a likelihood of confusion exists between the marks BOI NA BRASA and BOI NA BRAZA used in connection with restaurant services.

The only issue in dispute is the question of priority and petitioner's trademark rights. Because petitioner has not pleaded any registrations, petitioner must rely on its common law use to prove its priority. Inasmuch as respondent has not established use of its mark in connection with its services prior to the filing date of the registration's underlying application, the earliest date upon which respondent may rely for priority purposes is July 1, 1999. Thus, in order to establish priority, petitioner must show that it used its mark in connection with its services prior to July 1, 1999.

Mr. Saleh, petitioner's owner and president, testified as follows:

Q. From 1996 to the present time, has Churrascaria Boi Na Brasa ever shut down?

A. No.

Q. From 1996 to the present time, has Churrascaria Boi Na Brasa ever stopped doing business at its current location in New Jersey?

A. No.

Q. From 1996 to the present time, has Churrascaria Boi Na Brasa ever identified itself by a different name to the public?

A. No.

Saleh Test. p. 48.

Q. When did Churrascaria Boi Na Brasa first use this logo in association with its restaurant?

A. Since the day we open. It came out on the menu and after that it came out - I don't know how you call that thing in the front of the restaurant that we put on, canopy.

Q. Are you referring to a sign?

A. Yes, the sign, a design with a logo and the name. I have pictures back home.

Q. When did Churrascaria Boi Na Brasa open?

A. April of 1996. ...

Q. What is Terra Sul Corp.?

A. The Terra Sul Corp. is a corporation that I have opened and it owns Churrascaria Boi Na Brasa.

Q. When did Terra Sul Corp. acquire ownership of Churrascaria Boi Na Brasa?

A. It was in 1999.

Q. Is Terra Sul a registered corporation?

A. Yes.

Saleh Test. p. 51.

A. Okay. From '98 -actually '99, Churrascaria Boi Na Brasa Corp. owned Churrascaria Boi Na Brasa. I was the president. In '99, we changed the corporation and I was the president, and then it went to Terra Sul. However, this insurance policy - so the period on this policy is until the fifth month. So the next one probably - so to tell you the truth, if I'm going to answer, now I would say that Churrascaria Boi Na Brasa Corp. was the owner until '99 and as of 1999, we've created another corporation that became the owner and I was the president.

Q. And what was this corporation in 1999 that became the owner?

A. Terra Sul Corp.

Saleh Test. p. 28

Q. And from June 14<sup>th</sup>, 1999 to June 14<sup>th</sup>, 2000, who was the owner of Churrascaria Boi Na Brasa?

A. Terra Sul Corp, having myself as a president.

Saleh Test. p. 29

Q. What is Terra Sul Corp.?

A. The Terra Sul Corp. is a corporation that I have opened and it owns Churrascaria Boi Na Brasa.

Q. When did Terra Sul Corp. acquire ownership of Churrascaria Boi Na Brasa?

A. It was in 1999.

Saleh Test. p. 51

A. Terra Sul Corp. was incorporated on January 19, 1999.

Saleh Test. p. 52.

Q. On July 19, 1999, was Churrascaria Boi Na Brasa open for business?

A. Yes, it was.

Q. Was your restaurant Churrascaria Boi Na Brasa open for business before July 19, 1999?

A. Yes.

Saleh Test. p. 63.

A. ... when we started the restaurant, it was just myself, my wife, Paula, his wife, and my wife's sister. It was just the family.

Saleh Test. p. 76.

Q. But does Gullas Corporation own Terra Sul Corporation?

A. I said that they are two different companies and that I own both.

Q. Individually, you own the shares?

A. Yes.

Q. Does either of these two corporations have any other shareholders besides yourself?

A. My wife but I'm the owner.

Q. So besides you and your wife, there are no other shareholders?

A. No.

Saleh Test. p. 88.

This testimony establishes that the restaurant BOI NA BRASA has been providing restaurant services since 1996 and that it is currently owned and operated by petitioner Terra Sul Corporation. It also establishes that the mark BOI NA

BRASA has been and currently is displayed on menus and signage. While petitioner did not submit a picture of the sign or menus, respondent made one undated menu of record which serves to corroborate petitioner's testimony regarding its use of the mark as depicted in the drawing in petitioner's Exhibit No. 17. Saleh Test. p. 49. The logo depicted on the menu is shown below.



In addition, the testimony is supported by the newspaper advertisements shown below dated September 1997 and November 1999. Saleh Test. Exh. No. 15.



Petitioner's other exhibits, e.g., insurance policies, checks, and a real estate lease, also serve to corroborate Mr. Saleh's testimony regarding the provision of restaurant services under the mark BOI NA BRASA.

While the advertisements and drawings of the mark also include a design element and the word CHURRASCARIA in close proximity to BOI NA BRASA, CHURRASCARIA is the Portuguese word for grill room or rotisserie,<sup>3</sup> or barbeque restaurant.<sup>4</sup> In view of the highly descriptive nature of the word CHURRASCARIA, petitioner's common law trademark rights lie in the phrase BOI NA BRASA and, as such, the examples of use in the record that depict BOI NA BRASA in conjunction with the descriptive word are probative as to petitioner's common law trademark rights in BOI NA BRASA. While the evidence also establishes common law rights in petitioner's logo mark, the wording creates a separate impression from the design element and these examples of use support trademark rights in the words alone.

We further find that the mark BOI NA BRASA is inherently distinctive. *Otto Roth & Co., Inc. v. Universal Foods Corp.*, 640 F.2d 1317, 209 USPQ 40 (CCPA 1981) While the translation of the mark from Portuguese to English, OX IN EMBERS, could be suggestive of the grill-style restaurant services, without more, we cannot say that it is descriptive of the restaurant services.

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<sup>3</sup> Compact Portuguese and English Dictionary (NTC Publishing 1997). The Board may take judicial notice of dictionary definitions. *University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co.*, 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

<sup>4</sup> Portuguese Concise Dictionary (Harper Collins 1998).

Respondent argues that both petitioner and the prior user Churrascaria Boi Na Brasa Corporation (CBNBC) are New Jersey corporations and under "New Jersey law, any mark, registration or application for registration is assignable with the goodwill of the business in which the mark is used. The statute very clearly requires, however, that any such assignment 'shall be by instruments in writing duly executed and shall be recorded with the Secretary of State upon payment of the recording fee payable to the Secretary of State.'" Br. p. 7.

The New Jersey statute provides:

Any mark and its registration or application for registration shall be assignable with the good will of the business in which the mark is used, or with that part of the good will of the business connected with the use of and symbolized by the mark. Assignment shall be by instruments in writing duly executed and shall be recorded with the Secretary of State upon the payment of the recording fee payable to the Secretary of State. An assignment of any registration under this act shall be void as against any subsequent purchaser for valuable consideration without notice, unless it is filed for recording with the Secretary of State within 20 days after the date of the assignment or prior to the subsequent purchase or transfer.

N.J.S.A. 56:3-13.6(a).

Petitioner argues that the statute only pertains to trademark registrations and not common law rights and points to another section of the statute which provides:

Nothing herein shall adversely affect the rights or the enforcement of rights in marks acquired in good faith at any time at common law.



N.J.S.A. 56:3.13.

It is not clear if the New Jersey statutory code requires that the transfer of common law trademark rights between two corporations related by ownership in a few family members must be in writing. The wording "any mark *and* its registration or application for registration" (emphasis added) combined with the wording that "any assignment of any registration under this act shall be void" suggests this section pertains specifically to registrations or applications.

The record shows that it was the intent of Mr. Saleh, the owner and president of CBNBC and petitioner and the creator and operator of the restaurant BOI NA BRASA, to transfer the trademark rights residing in CBNBC from 1996 to 1999 to petitioner, the new corporation operating the restaurant, since 1999. We find that under the totality of the circumstances presented that petitioner acquired the trademark rights in BOI NA BRASA in 1999 and may rely on the use, beginning in 1996, of the prior holder CBNBC. However, we also find, in the alternative, that petitioner's own use of the mark BOI NA BRASA began during the spring or at the latest June, 1999, which predates respondent's July 1, 1999 first use date.

Respondent also attempts to undercut Mr. Saleh's testimony arguing that it is self-serving inasmuch as the

witness is the president and owner of petitioner. In particular, respondent contends that the testimony "has not been clear about when the mark as first used, the alleged transfer of the mark, and the ways his corporation allegedly used the mark from 1996-1999." Br. p. 15. Respondent further contends that the testimony is contradicted by the documentary evidence of record. Respondent relies, inter alia, on petitioner's filing for Registration of Alternate Name with the State of New Jersey wherein petitioner states in the form that it had not used the alternative name BOI NA BRASA prior to January 16, 2007 and a trademark application form for registration that was never filed with the USPTO that names Mr. Saleh as the owner of the mark.

The testimony of a witness can be sufficient to prove priority. See 3 J. Thomas McCarthy: McCarthy on Trademarks and Unfair Competition § 16.06(2) (4<sup>th</sup> ed. 2005). We find that the witness was competent to testify as to petitioner's use of the mark BOI NA BRASA in connection with its restaurant and the testimony is not characterized by bias, contradictions or inconsistencies. The testimony makes clear that petitioner operated a restaurant prior to respondent's filing date, and the mark BOI NA BRASA continues to be used by petitioner in connection with the provision of restaurant services.

The corporate documents and Mr. Saleh's prior statements made in a discovery deposition relied on by respondent do not reveal contradictions or inconsistencies as to the use of the mark BOI NA BRASA for a restaurant or the ownership of the resultant common law trademark rights.<sup>5</sup> The documents and any inferences to be drawn from them are not sufficient to render Mr. Saleh's testimony unreliable.

In view of the evidence and testimony presented as to petitioner's use prior to respondent's July 1, 1999 filing date, petitioner has established its priority with respect to its common law rights in the mark BOI NA BRASA for restaurant services.

Accordingly, petitioner has proven its claim of likelihood of confusion under Section 2(d) of the Trademark Act.

#### **DESCRIPTIVENESS**

Petitioner argues that respondent's mark "is at most descriptive and not suggestive once translated from Portuguese into English. If the mark is eligible for protection as a trademark, it must therefore have acquired some level of secondary meaning among the relevant public. Registrant Boi Na Braza has not produced or provided any evidence of secondary meaning (no surveys, tests, polls or

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<sup>5</sup> The appropriateness of the statement made in the filing with the state of New Jersey is not for us to decide. Its only purpose here is its impact, if any, on Mr. Saleh's testimony.

other evidence)." Br. p. 14. Petitioner relies on the following interrogatory responses from respondent:

...Boi Na Braza responds that the name "boi na brasa" is a well known name that is often used in Brazil. Based on their knowledge of the name from its use in Brazil, the Matheus brothers chose this name for their restaurant business and began marketing the business as such at least as early as July 1, 1999. The Matheus brothers changed the "s" to a "z" to give the name more distinctiveness.

Response to Interrogatory No. 16, Pet. NOR Exh. No. 1.

We begin by noting that under Section 7(b) of the Trademark Act respondent's registration enjoys the presumption of validity and it is petitioner's burden to rebut that presumption not respondent's burden to prove it. By its argument and evidence, petitioner has not articulated in what way the mark is descriptive or submitted evidence to prove descriptiveness. Therefore, petitioner has not proven its claim of descriptiveness under Section 2(e)(1) of the Trademark Act.

**Decision:** The petition for cancellation is granted based on the claim of likelihood of confusion under Section 2(d) and dismissed as to the claim of descriptiveness under Section 2(e)(1).

# EXHIBIT H

**Generated on:** This page was generated by TSDR on 2012-10-18 10:51:29 EST

**Mark:** CHURRASCARIA BOI NA BRASA



**US Serial Number:** 77813416

**Application Filing Date:** Aug. 26, 2009

**Register:** Principal

**Mark Type:** Service Mark

**Status:** Suspension check completed. Application remains suspended.

**Status Date:** Jun. 04, 2012

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### Mark Information

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**Mark Literal Elements:** CHURRASCARIA BOI NA BRASA

**Standard Character Claim:** No

**Mark Drawing Type:** 3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)

**Description of Mark:** The mark consists of words CHURRASCARIA BOI NA BRASA surrounding gaucho carving meat.

**Color(s) Claimed:** Color is not claimed as a feature of the mark.

**Disclaimer:** "CHURRASCARIA"

**Translation:** The English translation of CHURRASCARIA and BOI NA BRASA in the mark is BARBECUE RESTAURANT OR STEAK HOUSE and OX IN EMBERS.

02.01.07 - Westerners;Cowboys;Men, cowboys, and westerners  
02.01.10 - Mexican men;Sombreros, men wearing;Spaniards (men);Men, Spaniards or Mexicans, including men wearing sombreros  
02.09.07 - Humans, including men, women and children, depicted cooking;Cooking, humans

**Design Search**

**Code(s):** 08.11.25 - Hamburger patties;Kabobs (meat);Ribs (meat)  
 11.07.25 - Switchblade;Scalpels;Pocket knives;Paring knives;Meat choppers and grinders, meat choppers (knives);Knives, pocket;Knives, kitchen (with pointed ends);Knives, folding;Cleaver;Butcher knives;Carving knives (kitchen), non-electric  
 24.09.07 - Advertising, banners;Banners

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## Goods and Services

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**Note:**

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((..)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks \*..\* identify additional (new) wording in the goods/services.

**For:** RESTAURANT AND BAR SERVICES; RESTAURANT SERVICES;  
 RESTAURANT AND CATERING SERVICES; RESTAURANT AND CAFE SERVICES; TAKE OUT RESTAURANT SERVICES

**International Class:** 043 - Primary Class      **U.S Class:** 100, 101

**Class Status:** ACTIVE

**Basis:** 1(a)

**First Use:** Apr. 01, 1996      **Use in Commerce:** Apr. 01, 1996

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## Basis Information (Case Level)

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<b>Filed Use:</b> Yes	<b>Currently Use:</b> Yes	<b>Amended Use:</b> No
<b>Filed ITU:</b> No	<b>Currently ITU:</b> No	<b>Amended ITU:</b> No
<b>Filed 44D:</b> No	<b>Currently 44D:</b> No	<b>Amended 44D:</b> No
<b>Filed 44E:</b> No	<b>Currently 44E:</b> No	<b>Amended 44E:</b> No
<b>Filed 66A:</b> No	<b>Currently 66A:</b> No	
<b>Filed No Basis:</b> No	<b>Currently No Basis:</b> No	

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## Current Owner(s) Information

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**Owner Name:** Terra Sul Corporation

**DBA, AKA,**

**Formerly:** AKA Churrascaria Boi Na Brasa  
**Owner Address:** Store #4  
70 Adams Street  
Newark, NEW JERSEY 07105  
UNITED STATES  
**Legal Entity Type:** CORPORATION  
**State or Country Where Organized:** NEW JERSEY

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### Attorney/Correspondence Information

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#### Attorney of Record

**Attorney Name:** Eamon J Wall  
**Docket Number:** TSUL/T004

#### Correspondent

**Correspondent Name/Address:** Eamon J Wall  
Wall & Tong, LLP  
25 James Way  
Eatontown, NEW JERSEY 07724  
UNITED STATES

**Phone:** 732 542 2280  
**Fax:** 732 542 2283

**Correspondent e-mail:** [ewall@walltong.com](mailto:ewall@walltong.com)  
**Correspondent e-mail Authorized:** No

**Domestic Representative - Not Found**

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### Prosecution History

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Date	Description	Proceeding Number
Jun. 04, 2012	REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED	77312
Dec. 01, 2011	REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED	77312
May 26, 2011	REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED	77312
Nov. 26, 2010	REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED	77312
Jul. 20, 2010	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
May 25, 2010	LETTER OF SUSPENSION MAILED	
May 24, 2010	SUSPENSION LETTER WRITTEN	83223



May 24, 2010	EXAMINERS AMENDMENT MAILED	
May 24, 2010	EXAMINER'S AMENDMENT ENTERED	88888
May 24, 2010	EXAMINERS AMENDMENT -WRITTEN	83223
May 20, 2010	DATA MODIFICATION COMPLETED	77312
May 20, 2010	ASSIGNED TO LIE	77312
Dec. 03, 2009	NON-FINAL ACTION MAILED	
Dec. 03, 2009	NON-FINAL ACTION WRITTEN	83223
Dec. 01, 2009	ASSIGNED TO EXAMINER	83223
Sep. 03, 2009	NOTICE OF DESIGN SEARCH CODE MAILED	
Sep. 02, 2009	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Sep. 01, 2009	NEW APPLICATION ENTERED IN TRAM	

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### TM Staff and Location Information

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#### TM Staff Information

<b>TM Attorney:</b>	BIDDULPH, HEATHER ANN	<b>Law Office Assigned:</b>	LAW OFFICE 104
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#### File Location

<b>Current Location:</b>	TMEG LAW OFFICE 104	<b>Date in Location:</b>	Jun. 04, 2012
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## Change Of Correspondence Address

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The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77813416
LAW OFFICE ASSIGNED	LAW OFFICE 104
<b>MARK SECTION</b>	
MARK	CHURRASCARIA BOI NA BRASA (stylized and/or with design)
<b>CORRESPONDENCE SECTION (current)</b>	
ORIGINAL ADDRESS	EAMON J WALL WALL & TONG, LLP 595 SHREWSBURY AVE SHREWSBURY, NJ 07702-4158 7328428110 7328428388 ewall@walltong.com
<b>NEW CORRESPONDENCE ADDRESS</b>	
NEW ADDRESS	Eamon J Wall Wall & Tong, LLP 25 James Way Eatontown New Jersey United States 07724 732 542 2280 732 542 2283 ewall@walltong.com
<b>SIGNATURE SECTION</b>	
SIGNATURE	/EJ Wall/
SIGNATORY NAME	Eamon J Wall
SIGNATORY DATE	07/20/2010
SIGNATORY POSITION	Attorney of Record, NJ Bar
AUTHORIZED SIGNATORY	YES
<b>FILING INFORMATION SECTION</b>	

<b>SUBMIT DATE</b>	Tue Jul 20 16:36:08 EDT 2010
<b>TEAS STAMP</b>	USPTO/CCA-173.15.144.81-2 0100720163608181079-77813 416-4708083b0e4ca4fd7e040 ee3f1b4f1891f8-N/A-N/A-20 100720163446075594

**Trademark Snap Shot Amendment & Mail Processing Stylesheet**  
(Table presents the data on Amendment & Mail Processing Complete)

**OVERVIEW**

SERIAL NUMBER	77813416	FILING DATE	08/26/2009
REG NUMBER	0000000	REG DATE	N/A
REGISTER	PRINCIPAL	MARK TYPE	SERVICE MARK
INTL REG #	N/A	INTL REG DATE	N/A
TM ATTORNEY	BIDDULPH, HEATHER ANN	L.O. ASSIGNED	104

**PUB INFORMATION**

RUN DATE	05/25/2010		
PUB DATE	N/A		
STATUS	652-SUSPENSION LETTER COUNTED - NOT MAILED		
STATUS DATE	05/24/2010		
LITERAL MARK ELEMENT	CHURRASCARIA BOI NA BRASA		
DATE ABANDONED	N/A	DATE CANCELLED	N/A
SECTION 2F	NO	SECTION 2F IN PART	NO
SECTION 8	NO	SECTION 8 IN PART	NO
SECTION 15	NO	REPUB 12C	N/A
RENEWAL FILED	NO	RENEWAL DATE	N/A
DATE AMEND REG	N/A		

**FILING BASIS**

FILED BASIS		CURRENT BASIS		AMENDED BASIS	
1 (a)	YES	1 (a)	YES	1 (a)	NO
1 (b)	NO	1 (b)	NO	1 (b)	NO
44D	NO	44D	NO	44D	NO
44E	NO	44E	NO	44E	NO
66A	NO	66A	NO		
NO BASIS	NO	NO BASIS	NO		

**MARK DATA**

STANDARD CHARACTER MARK	NO
LITERAL MARK ELEMENT	CHURRASCARIA BOI NA BRASA

MARK DRAWING CODE	3-AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/LETTER(S)/NUMBER(S)
COLOR DRAWING FLAG	NO

### CURRENT OWNER INFORMATION

PARTY TYPE	10-ORIGINAL APPLICANT
NAME	Terra Sul Corporation
ADDRESS	Store #4 70 Adams Street Newark, NJ 07105
ENTITY	03-CORPORATION
CITIZENSHIP	New Jersey
DBA/AKA	AKA Churrascaria Boi Na Brasa

### GOODS AND SERVICES

INTERNATIONAL CLASS	043
DESCRIPTION TEXT	RESTAURANT AND BAR SERVICES; RESTAURANT SERVICES; RESTAURANT AND CATERING SERVICES; RESTAURANT AND CAFE SERVICES; TAKE OUT RESTAURANT SERVICES

### GOODS AND SERVICES CLASSIFICATION

INTERNATIONAL CLASS	043	FIRST USE DATE	04/01/1996	FIRST USE IN COMMERCE DATE	04/01/1996	CLASS STATUS	6-ACTIVE
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### MISCELLANEOUS INFORMATION/STATEMENTS

CHANGE IN REGISTRATION	NO
COLORS CLAIMED STATEMENT	Color is not claimed as a feature of the mark.
DISCLAIMER W/PREDETER TXT	"CHURRASCARIA"
DESCRIPTION OF MARK	The mark consists of words CHURRASCARIA BOI NA BRASA surrounding gaucho carving meat.
TRANSLATION	The English translation of CHURRASCARIA and BOI NA BRASA in the mark is BARBECUE RESTAURANT OR STEAK HOUSE and OX IN EMBERS.

### PROSECUTION HISTORY

DATE	ENT CD	ENT TYPE	DESCRIPTION	ENT NUM
05/24/2010	CNSL	R	SUSPENSION LETTER WRITTEN	012
05/24/2010	CNEA	O	EXAMINERS AMENDMENT MAILED	011

05/24/2010	XAEC	I	EXAMINER'S AMENDMENT ENTERED	010
05/24/2010	CNEA	R	EXAMINERS AMENDMENT -WRITTEN	009
05/20/2010	DMCC	I	DATA MODIFICATION COMPLETED	008
05/20/2010	ALIE	A	ASSIGNED TO LIE	007
12/03/2009	CNRT	F	NON-FINAL ACTION MAILED	006
12/03/2009	CNRT	R	NON-FINAL ACTION WRITTEN	005
12/01/2009	DOCK	D	ASSIGNED TO EXAMINER	004
09/03/2009	MDSC	O	NOTICE OF DESIGN SEARCH CODE MAILED	003
09/02/2009	NWOS	I	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	002
09/01/2009	NWAP	I	NEW APPLICATION ENTERED IN TRAM	001

### CURRENT CORRESPONDENCE INFORMATION

ATTORNEY	Eamon J Wall
CORRESPONDENCE ADDRESS	EAMON J WALL WALL & TONG, LLP 595 SHREWSBURY AVE SHREWSBURY, NJ 07702-4158
DOMESTIC REPRESENTATIVE	NONE

# CHURRASCARIA



BOI NA BRASA

# UNITED STATES PATENT AND TRADEMARK OFFICE

**SERIAL NO:** 77813416

**MARK:** CHURRASCARIA BOI NA BRASA

**\*77813416\***

**CORRESPONDENT ADDRESS:**

EAMON J WALL  
WALL & TONG, LLP  
595 SHREWSBURY AVE  
SHREWSBURY, NJ 07702-4158

**GENERAL TRADEMARK INFORMATION:**

<http://www.uspto.gov/main/trademarks.htm>

**APPLICANT:** Terra Sul Corporation

**CORRESPONDENT'S REFERENCE/DOCKET**

**NO:** TSUL/T004

**CORRESPONDENT E-MAIL ADDRESS:**

## EXAMINER'S AMENDMENT

**ISSUE/MAILING DATE:**

**AMENDMENT:** In accordance with the authorization granted by EAMON J WALL on May 20, 2010 the application has been AMENDED as indicated below. Please advise the undersigned examining attorney immediately if there is an objection to the amendment. Otherwise, no response is necessary. TMEP §707.

If the identification of goods and/or services has been amended, please note that any future amendments must be in accordance with 37 C.F.R. §2.71(a) and TMEP §1402.07(e).

The following disclaimer statement is added to the record:

No claim is made to the exclusive right to use "CHURRASCARIA" apart from the mark as shown.

See 15 U.S.C. §1056(a); TMEP §§1213, 1213.08(a)(i).

The applicant wishes to wait for final disposition of the prior pending application before submitting arguments regarding the Section 2(d) refusal as to the mark in U.S. Registration No. 2666968.

The refusal under Section 2(d) as to the mark in U.S. Registration No. 2666968 and finding of a potential likelihood of confusion with the mark in the cited prior pending Application Serial No. 77779339 are continued and maintained.



A letter of suspension will follow this examiner's amendment.

/Heather Biddulph/  
Heather Biddulph  
Law Office 104  
Phone No. (571) 272-8190  
Fax No. (571) 273-8190

**STATUS CHECK:** Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

# UNITED STATES PATENT AND TRADEMARK OFFICE

**SERIAL NO:** 77813416

**MARK:** CHURRASCARIA BOI NA BRASA

**\*77813416\***

**CORRESPONDENT ADDRESS:**

EAMON J WALL  
WALL & TONG, LLP  
595 SHREWSBURY AVE  
SHREWSBURY, NJ 07702-4158

**GENERAL TRADEMARK INFORMATION:**

<http://www.uspto.gov/main/trademarks.htm>

**APPLICANT:** Terra Sul Corporation

**CORRESPONDENT'S REFERENCE/DOCKET  
NO:**

TSUL/T004

**CORRESPONDENT E-MAIL ADDRESS:**

## NOTICE OF SUSPENSION

**ISSUE/MAILING DATE:**

**SUSPENSION PROCEDURE:** This suspension notice serves to suspend action on the application for the reason(s) specified below. No response is needed. However, if you wish to respond to this notice, you should use the "Response to Letter of Suspension" form found at <http://teasroa.uspto.gov/rsi/rsi>. The Office will conduct periodic status checks to determine if suspension remains appropriate.

Action on this application is suspended pending the disposition of:

- Application Serial No(s). **77779339**

Since applicant's effective filing date is subsequent to the effective filing date of the above-identified application(s), the latter, if and when it registers, may be cited against this application in a refusal to register under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d). See 37 C.F.R. §2.83; TMEP §§1208 et seq. A copy of information relevant to this pending application(s) **was sent previously**.

Applicant may submit a request to remove the application from suspension to present arguments related to the potential conflict between the relevant application(s) or other arguments related to the ground for suspension. TMEP §716.03. Applicant's election not to present arguments during suspension will not affect the applicant's right to present arguments later should a refusal in fact issue. If a refusal does issue, applicant will be afforded 6 months from the mailing or e-mailing date of the Office action to submit a

response. 15 U.S.C. §1062(b); 37 C.F.R. §2.62.

The following refusal(s)/requirement(s) is/are continued and maintained:

The refusal under Section 2(d) due to a likelihood of confusion with the mark in U.S. Registration No. 2666968.

/Heather Biddulph/  
Heather Biddulph  
Law Office 104  
Phone No. (571) 272-8190  
Fax No. (571) 273-8190

**STATUS CHECK:** Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

**Trademark Snap Shot Amendment & Mail Processing Stylesheet**  
(Table presents the data on Amendment & Mail Processing Complete)

**OVERVIEW**

SERIAL NUMBER	77813416	FILING DATE	08/26/2009
REG NUMBER	0000000	REG DATE	N/A
REGISTER	PRINCIPAL	MARK TYPE	SERVICE MARK
INTL REG #	N/A	INTL REG DATE	N/A
TM ATTORNEY	BIDDULPH, HEATHER ANN	L.O. ASSIGNED	104

**PUB INFORMATION**

RUN DATE	05/21/2010		
PUB DATE	N/A		
STATUS	641-NON-FINAL ACTION - MAILED		
STATUS DATE	12/03/2009		
LITERAL MARK ELEMENT	CHURRASCARIA BOI NA BRASA		
DATE ABANDONED	N/A	DATE CANCELLED	N/A
SECTION 2F	NO	SECTION 2F IN PART	NO
SECTION 8	NO	SECTION 8 IN PART	NO
SECTION 15	NO	REPUB 12C	N/A
RENEWAL FILED	NO	RENEWAL DATE	N/A
DATE AMEND REG	N/A		

**FILING BASIS**

FILED BASIS		CURRENT BASIS		AMENDED BASIS	
1 (a)	YES	1 (a)	YES	1 (a)	NO
1 (b)	NO	1 (b)	NO	1 (b)	NO
44D	NO	44D	NO	44D	NO
44E	NO	44E	NO	44E	NO
66A	NO	66A	NO		
NO BASIS	NO	NO BASIS	NO		

**MARK DATA**

STANDARD CHARACTER MARK	NO
LITERAL MARK ELEMENT	CHURRASCARIA BOI NA BRASA

MARK DRAWING CODE	3-AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/LETTER(S)/NUMBER(S)
COLOR DRAWING FLAG	NO

### CURRENT OWNER INFORMATION

PARTY TYPE	10-ORIGINAL APPLICANT
NAME	Terra Sul Corporation
ADDRESS	Store #4 70 Adams Street Newark, NJ 07105
ENTITY	03-CORPORATION
CITIZENSHIP	New Jersey
DBA/AKA	AKA Churrascaria Boi Na Brasa

### GOODS AND SERVICES

INTERNATIONAL CLASS	043
DESCRIPTION TEXT	RESTAURANT AND BAR SERVICES; RESTAURANT SERVICES; RESTAURANT AND CATERING SERVICES; RESTAURANT AND CAFE SERVICES; TAKE OUT RESTAURANT SERVICES

### GOODS AND SERVICES CLASSIFICATION

INTERNATIONAL CLASS	043	FIRST USE DATE	04/01/1996	FIRST USE IN COMMERCE DATE	04/01/1996	CLASS STATUS	6-ACTIVE
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### MISCELLANEOUS INFORMATION/STATEMENTS

CHANGE IN REGISTRATION	NO
COLORS CLAIMED STATEMENT	Color is not claimed as a feature of the mark.
DESCRIPTION OF MARK	The mark consists of words CHURRASCARIA BOI NA BRASA surrounding gaucho carving meat.
TRANSLATION	The English translation of CHURRASCARIA and BOI NA BRASA in the mark is BARBECUE RESTAURANT OR STEAK HOUSE and OX IN EMBERS.

### PROSECUTION HISTORY

DATE	ENT CD	ENT TYPE	DESCRIPTION	ENT NUM
05/20/2010	DMCC	I	DATA MODIFICATION COMPLETED	008
05/20/2010	ALIE	A	ASSIGNED TO LIE	007
12/03/2009	CNRT	F	NON-FINAL ACTION MAILED	006

12/03/2009	CNRT	R	NON-FINAL ACTION WRITTEN	005
12/01/2009	DOCK	D	ASSIGNED TO EXAMINER	004
09/03/2009	MDSC	O	NOTICE OF DESIGN SEARCH CODE MAILED	003
09/02/2009	NWOS	I	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	002
09/01/2009	NWAP	I	NEW APPLICATION ENTERED IN TRAM	001

### CURRENT CORRESPONDENCE INFORMATION

ATTORNEY	Eamon J Wall
CORRESPONDENCE ADDRESS	EAMON J WALL WALL & TONG, LLP 595 SHREWSBURY AVE SHREWSBURY, NJ 07702-4158
DOMESTIC REPRESENTATIVE	NONE

# CHURRASCARIA



BOI NA BRASA

# UNITED STATES PATENT AND TRADEMARK OFFICE

**SERIAL NO:** 77/813416

**MARK:** CHURRASCARIA BOI NA BRASA

**\*77813416\***

**CORRESPONDENT ADDRESS:**

EAMON J WALL  
WALL & TONG, LLP  
595 SHREWSBURY AVE  
SHREWSBURY, NJ 07702-4158

**RESPOND TO THIS ACTION:**

<http://www.uspto.gov/teas/eTEASpageD.htm>

**GENERAL TRADEMARK INFORMATION:**

<http://www.uspto.gov/main/trademarks.htm>

**APPLICANT:** Terra Sul Corporation

**CORRESPONDENT'S REFERENCE/DOCKET  
NO:**

TSUL/T004

**CORRESPONDENT E-MAIL ADDRESS:**

## OFFICE ACTION

TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE.

**ISSUE/MAILING DATE:**

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

### Section 2(d) Refusal – Likelihood Of Confusion

Registration of the applied-for mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. 2666968. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* See the enclosed registration.

Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely that a potential consumer would be confused or mistaken or deceived as to the source of the services of the applicant and registrant. *See* 15 U.S.C. §1052(d). The court in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) listed the principal factors to be considered when determining whether there is a likelihood of confusion under Section 2(d). *See* TMEP §1207.01. However, not all of the factors are necessarily relevant or of equal weight, and any one factor



may be dominant in a given case, depending upon the evidence of record. *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003); *see In re E. I. du Pont*, 476 F.2d at 1361-62, 177 USPQ at 567.

In this case, the following factors are the most relevant: similarity of the marks, similarity of the services, and similarity of trade channels of the services. *See In re Opus One, Inc.*, 60 USPQ2d 1812 (TTAB 2001); *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593 (TTAB 1999); *In re Azteca Rest. Enters., Inc.*, 50 USPQ2d 1209 (TTAB 1999); TMEP §§1207.01 *et seq.*

Applicant is applying for CHURRASCARIA BOI NA BRASA and design for use with RESTAURANT AND BAR SERVICES; RESTAURANT SERVICES; RESTAURANT AND CATERING SERVICES; RESTAURANT AND CAFE SERVICES; TAKE OUT RESTAURANT SERVICES..

The prior registration is for BOI NA BRAZA and design for use with restaurant services.

### Comparison of the Marks

In a likelihood of confusion determination, the marks are compared for similarities in their appearance, sound, meaning or connotation and commercial impression. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973); TMEP §1207.01(b). Similarity in any one of these elements may be sufficient to find a likelihood of confusion. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); *In re Lamson Oil Co.*, 6 USPQ2d 1041, 1043 (TTAB 1987); *see* TMEP §1207.01(b).

In this case, the marks are highly similar in pronunciation and meaning. The marks dominant wording "BOI NA BRAZA" and "BOI NA BRASA" are pronounced identically and have the same meaning. See translation statement in registration and application. The additional wording in applicant's mark, CHURRASCARIA is generic and does not significantly change the commercial impression of the mark.

### Comparison of the Services

The goods and/or services of the parties need not be identical or directly competitive to find a likelihood of confusion. *See Safety-Kleen Corp. v. Dresser Indus., Inc.*, 518 F.2d 1399, 1404, 186 USPQ 476, 480 (C.C.P.A. 1975); TMEP §1207.01(a)(i). Rather, it is sufficient that the goods and/or services are related in some manner and/or the conditions surrounding their marketing are such that they would be encountered by the same purchasers under circumstances that would give rise to the mistaken belief that the goods and/or services come from a common source. *In re Total Quality Group, Inc.*, 51 USPQ2d 1474, 1476 (TTAB 1999); TMEP §1207.01(a)(i); *see, e.g., On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086-87, 56 USPQ2d 1471, 1475-76 (Fed. Cir. 2000); *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 1566-68, 223 USPQ 1289, 1290 (Fed. Cir. 1984).

In this case, the services are identical.

The examining attorney must resolve any doubt regarding a likelihood of confusion in favor of the prior registrant. TMEP §1207.01(d)(i); *see Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1265, 62 USPQ2d 1001, 1003 (Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 464-65, 6 USPQ2d 1025, 1025 (Fed. Cir. 1988).

The similar commercial impression created by the marks and the relatedness of the identified services creates a likelihood of confusion among consumers as to the source of the services. Therefore,

applicant's mark is refused registration under Section 2(d) of the Trademark Act.

Although applicant's mark has been refused registration, applicant may respond to the refusal(s) by submitting evidence and arguments in support of registration.

### **Prior Pending Application**

The filing date of pending Application Serial No. 77779339 precedes applicant's filing date. See attached referenced application. Further, the instant application is for the entire United States and includes overlapping geographic areas. If the mark in the referenced application registers, applicant's mark may be refused registration under Trademark Act Section 2(d) because of a likelihood of confusion between the two marks. See 15 U.S.C. §1052(d); 37 C.F.R. §2.83; TMEP §§1208 *et seq.* Therefore, upon receipt of applicant's response to this Office action, action on this application may be suspended pending final disposition of the earlier-filed referenced application.

In response to this Office action, applicant may present arguments in support of registration by addressing the issue of the potential conflict between applicant's mark and the mark in the referenced application. Applicant's election not to submit arguments at this time in no way limits applicant's right to address this issue later if a refusal under Section 2(d) issues.

***Nonetheless, applicant must respond at this time to the above refusal and following requirements in order to avoid abandonment of the application.***

### **Disclaimer Required**

The applicant must insert a disclaimer of CHURRASCARIA in the application because it merely describes the type of services offered by applicant. See 15 U.S.C. §1056(a); TMEP §§1213, 1213.03(a).

The word immediately conveys to consumers that applicant is offering Brazilian Barbecue restaurant services. See attached Internet evidence.

The computerized printing format for the Office's *Trademark Official Gazette* requires a standardized format for a disclaimer. TMEP §1213.08(a)(i). The following is the standard format used by the Office:

**No claim is made to the exclusive right to use "CHURRASCARIA" apart from the mark as shown.**

TMEP §1213.08(a)(i); see *In re Owatonna Tool Co.*, 231 USPQ 493 (Comm'r Pats. 1983).

A "disclaimer" is a statement in the record that an applicant does not claim exclusive rights to an unregistrable component of a mark; it does not affect the appearance of the mark. TMEP §1213. An unregistrable component can include wording or designs that are merely descriptive or generic, deceptively misdescriptive, or primarily geographically descriptive of an applicant's goods and/or services. 15 U.S.C. §1052(e); see TMEP §§1213, 1213.03.

The Office can require an applicant to disclaim an unregistrable component of a mark. 15 U.S.C. §1056(a). Failure to comply with a disclaimer requirement can result in a refusal to register the entire mark. TMEP §1213.01(b).

If applicant has questions about its application or this Office action, please contact the assigned trademark examining attorney at the telephone number below.

/Heather Biddulph/  
Heather Biddulph  
Law Office 104  
Phone No. (571) 272-8190  
Fax No. (571) 273-8190

**RESPOND TO THIS ACTION:** Applicant should file a response to this Office action online using the form at <http://www.uspto.gov/teas/eTEASpageD.htm>, waiting 48-72 hours if applicant received notification of the Office action via e-mail. For *technical* assistance with the form, please e-mail [TEAS@uspto.gov](mailto:TEAS@uspto.gov). For questions about the Office action itself, please contact the assigned examining attorney. **Do not respond to this Office action by e-mail; the USPTO does not accept e-mailed responses.**

If responding by paper mail, please include the following information: the application serial number, the mark, the filing date and the name, title/position, telephone number and e-mail address of the person signing the response. Please use the following address: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

**STATUS CHECK:** Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

**DESIGN MARK**

**Serial Number**

76088982

**Status**

SECTION 8-ACCEPTED

**Word Mark**

BOI NA BRAZA

**Standard Character Mark**

No

**Registration Number**

2666968

**Date Registered**

2002/12/24

**Type of Mark**

SERVICE MARK

**Register**

PRINCIPAL

**Mark Drawing Code**

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

**Owner**

Boi Na Braza, Inc. CORPORATION TEXAS 415 Duncan Perry Road SUITE 330  
Arlington TEXAS 76051

**Goods/Services**

Class Status -- ACTIVE. IC 042. US 100 101. G & S: restaurant  
services. First Use: 2000/07/06. First Use In Commerce: 2000/07/06.

**Translation Statement**

The English translation of "BOI NA BRAZA" is "ox in embers".

**Filing Date**

2000/07/14

**Examining Attorney**

MAHONEY, PAULA

**Attorney of Record**

Remy M. Davis



**DESIGN MARK**

**Serial Number**

77779339

**Status**

NON-FINAL ACTION - MAILED

**Word Mark**

BOI NA BRAZA

**Standard Character Mark**

Yes

**Type of Mark**

SERVICE MARK

**Register**

PRINCIPAL

**Mark Drawing Code**

(4) STANDARD CHARACTER MARK

**Owner**

Boi Na Braza, Inc. CORPORATION TEXAS 4025 William D. Tate Grapevine  
TEXAS 76051

**Goods/Services**

Class Status -- ACTIVE. IC 043. US 100 101. G & S: restaurant and  
bar services. First Use: 1999/07/19. First Use In Commerce:  
2000/09/11.

**Concurrent Use Statement**

Concurrent use information. Applicant seeks registration of the mark  
in connection with "restaurant and bar services" for the entire United  
States, except for the State of New Jersey. Terra Sul Corp., located  
at 70 Adams Street, Store No. 4, Newark, New Jersey 07105, claims to  
have used the mark CHURRASCARIA BOI NA BRASA in the State of New  
Jersey since 1996.

**Filing Date**

2009/07/13


**Examining Attorney**


LEIPZIG, MARC

**Attorney of Record**

Remy M. Davis

**BOI NA BRAZA**

**CREDOREference**

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chupar  
chupeta  
**churrascaria**  
churrasco  
churrasqueira  
Browse Book  
Headings

Bilingual Dictionaries > Collins Portuguese Dictionary

churrascaria

[ʃuxaʃka'ria] F

barbecue restaurant

 © HarperCollins Publishers 1991, 2001, 2006

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...Collins Portuguese Dictionary...Next entry >]



APA | Chicago | Harvard | MLA


churrascaria. (2006). In *Collins Portuguese Dictionary*. Retrieved from <http://www.credoreference.com/entry/collinsport/churrascaria>

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  - brandura
  - branquear
  - brasa**
  - brasão
  - braseiro

Bilingual Dictionaries > Collins Portuguese Dictionary

brasa

[ˈbɾazɐ] F

hot coal, **em brasa** red-hot, **pisar em brasa** to be on tenterhooks, **mandar brasa** (col) to go for it, **puxar a brasa para a sua sardinha** (col) to look out for o.s.

 © HarperCollins Publishers 1991, 2001, 2006

[< Previous entry...

...Collins Portuguese Dictionary...Next entry >]

☐ **Browse Book**  
Headings

**APA** | Chicago | Harvard | MLA

brasa, (2006). In *Collins Portuguese Dictionary*. Retrieved from <http://www.credoreference.com/entry/collinsport/brasa>

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\*\*\* User:hbiddulph \*\*\*

#	Total Marks	Dead Marks	Live Viewed Docs	Live Viewed Images	Status/ Search Duration	Search
01	27	0	27	22	0:02	*ch{v}{"r"1:2}{v}{"sz"}{"ckq"}*[bi,ti] not dead[ld]
02	3013	N/A	0	0	0:02	*bo{"iy"}*[bi,ti] not dead[ld]
03	114803	N/A	0	0	0:04	*na*[bi,ti] not dead[ld]
04	1177	N/A	0	0	0:01	*bra{"sz"}*[bi,ti] not dead[ld]
05	4	0	4	4	0:01	2 and 3 and 4
06	172	0	172	140	0:01	2 and (3 4)
07	115912	N/A	0	0	0:01	3 4
08	68	0	68	58	0:01	3 and 4
09	89528	N/A	0	0	0:05	*o{"xckq"}{"sz"0:1}*[bi,ti] not dead[ld]
10	1298	N/A	0	0	0:03	*ember*[bi,ti] not dead[ld]
11	122	0	122	114	0:01	9 and 10
12	12517	N/A	0	0	0:04	*ox*[bi,ti] not dead[ld]
13	3	0	3	3	0:01	12 and 10
14	0	0	0	0	0:02	ox[gs] and "043"[ic]
15	0	0	0	0	0:02	ox[ds] and "043"[ic]
16	527	N/A	0	0	0:01	ox[bi,ti]
17	233	0	12	9	0:03	ox[bi,ti] not dead[ld]
18	6	1	5	5	0:02	"Boi Na Braza"[on]
19	95	N/A	0	0	0:01	(020107 - Cowboys)[on] not dead[ld]
20	435	N/A	0	0	0:01	(020110 - Men, Spaniards)[on] not dead[ld]
21	138	N/A	0	0	0:01	(020907 - Cooking, humans)[on] not dead[ld]
22	601	0	24	601	0:02	(020107 - Cowboys)[dc] not dead[ld]
23	369	0	5	369	0:01	(020110 - Men, Spaniards)[dc] not dead[ld]
24	166	0	5	166	0:01	(020907 - Cooking, humans)[dc] not dead[ld]
25	21	0	3	21	0:01	22 and (23 24)
26	4	0	2	4	0:01	23 and 24

Session started 12/3/2009 9:04:07 AM

Session finished 12/3/2009 9:47:15 AM

Total search duration 0 minutes 46 seconds

Session duration 43 minutes 8 seconds

Default NEAR limit=1ADJ limit=1

Sent to TICRS as Serial Number: 77813416

UNITED STATES PATENT AND TRADEMARK OFFICE

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Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451  
[www.uspto.gov](http://www.uspto.gov)

Sep 3, 2009

**NOTICE OF DESIGN SEARCH CODE**

EAMON J WALL  
WALL & TONG, LLP  
595 SHREWSBURY AVE  
SHREWSBURY, NJ 07702-4158

**ATTORNEY REFERENCE NUMBER:** TSUL/T004

**SERIAL NUMBER:** 77/813416

**MARK:** CHURRASCARIA BOI NA BRASA AND DESIGN

**OWNER:** Terra Sul Corporation

---

The USPTO may assign design search codes, as appropriate, to new applications and renewed registrations to assist in searching the USPTO database for conflicting marks. They have no legal significance and will not appear on the registration certificate.

Design search codes are numerical codes assigned to figurative, non-textual elements found in marks. For example, if your mark contains the design of a flower, design search code 05.05 would be assigned to your application. Design search codes are described on Internet Web page <http://www.uspto.gov/tmdb/dscm/index.html>.

Response to this notice is not required; however, to suggest additions or changes to the design search code(s) assigned to your mark, please e-mail [TMDesignCodeComments@USPTO.GOV](mailto:TMDesignCodeComments@USPTO.GOV). You **must** reference your application serial number within your request. The USPTO will review the proposal and update the record, if appropriate. For questions, please call 1-800-786-9199 to speak to a Customer Service representative.

**Design search codes assigned to the referenced serial number are listed below.**

# Trademark/Service Mark Application, Principal Register

Serial Number: 77813416

Filing Date: 08/26/2009

The table below presents the data as entered.

Input Field	Entered
<b>SERIAL NUMBER</b>	77813416
<b>MARK INFORMATION</b>	
<b>*MARK</b>	<a href="\\TICRS\EXPORT7\IMAGEOUT7\778\134\77813416\xml1\AP P0002.JPG">\\TICRS\EXPORT7\IMAGEOUT7\778\134\77813416\xml1\AP P0002.JPG</a>
<b>SPECIAL FORM</b>	YES
<b>USPTO-GENERATED IMAGE</b>	NO
<b>LITERAL ELEMENT</b>	CHURRASCARIA BOI NA BRASA
<b>COLOR MARK</b>	NO
<b>*DESCRIPTION OF THE MARK (and Color Location, if applicable)</b>	The mark consists of words CHURRASCARIA BOI NA BRASA surrounding gauchito carving meat.
<b>PIXEL COUNT ACCEPTABLE</b>	YES
<b>PIXEL COUNT</b>	729 x 944
<b>REGISTER</b>	Principal
<b>APPLICANT INFORMATION</b>	
<b>*OWNER OF MARK</b>	Terra Sul Corporation
<b>DBA/AKA/TA/Formerly</b>	AKA Churrascaria Boi Na Brasa
<b>INTERNAL ADDRESS</b>	Store #4
<b>*STREET</b>	70 Adams Street
<b>*CITY</b>	Newark
<b>*STATE (Required for U.S. applicants)</b>	New Jersey
<b>*COUNTRY</b>	United States

<b>*ZIP/POSTAL CODE</b> (Required for U.S. applicants only)	07105
<b>LEGAL ENTITY INFORMATION</b>	
<b>TYPE</b>	corporation
<b>STATE/COUNTRY OF INCORPORATION</b>	New Jersey
<b>GOODS AND/OR SERVICES AND BASIS INFORMATION</b>	
<b>INTERNATIONAL CLASS</b>	043
<b>*IDENTIFICATION</b>	RESTAURANT AND BAR SERVICES; RESTAURANT SERVICES; RESTAURANT AND CATERING SERVICES; RESTAURANT AND CAFE SERVICES; TAKE OUT RESTAURANT SERVICES
<b>FILING BASIS</b>	SECTION 1(a)
<b>FIRST USE ANYWHERE DATE</b>	At least as early as 04/01/1996
<b>FIRST USE IN COMMERCE DATE</b>	At least as early as 04/01/1996
<b>SPECIMEN FILE NAME(S)</b>	
<b>ORIGINAL PDF FILE</b>	<a href="#">spec-1731514481-161620165 . CHURRASCARIA BOI NA BRASA SPECIMEN.pdf</a>
<b>CONVERTED PDF FILE(S)</b> (1 page)	<a href="#">\\TICRS\EXPORT7\IMAGEOUT7\778\134\77813416\xml1\APP0003.JPG</a>
<b>SPECIMEN DESCRIPTION</b>	menu bearing the mark
<b>ADDITIONAL STATEMENTS SECTION</b>	
<b>TRANSLATION</b>	The English translation of CHURRASCARIA and BOI NA BRASA in the mark is BARBECUE RESTAURANT OR STEAK HOUSE and OX IN EMBERS.
<b>ATTORNEY INFORMATION</b>	
<b>NAME</b>	Eamon J Wall
<b>ATTORNEY DOCKET NUMBER</b>	TSUL/T004
<b>FIRM NAME</b>	Wall & Tong, LLP
<b>STREET</b>	595 Shrewsbury Avenue
<b>CITY</b>	Shrewsbury
<b>STATE</b>	New Jersey

<b>COUNTRY</b>	United States
<b>ZIP/POSTAL CODE</b>	07702
<b>PHONE</b>	7328428110
<b>FAX</b>	7328428388
<b>EMAIL ADDRESS</b>	ewall@walltong.com
<b>AUTHORIZED TO COMMUNICATE VIA EMAIL</b>	No
<b>OTHER APPOINTED ATTORNEY</b>	Kin-Wah Tong; Diana J Rea; Michael Bentley; Emmanuel Coffy; Jimmy Kim; Yelena Morozova; Christopher M Panagos
<b>CORRESPONDENCE INFORMATION</b>	
<b>NAME</b>	Eamon J Wall
<b>FIRM NAME</b>	Wall & Tong, LLP
<b>STREET</b>	595 Shrewsbury Avenue
<b>CITY</b>	Shrewsbury
<b>STATE</b>	New Jersey
<b>COUNTRY</b>	United States
<b>ZIP/POSTAL CODE</b>	07702
<b>PHONE</b>	7328428110
<b>FAX</b>	7328428388
<b>EMAIL ADDRESS</b>	ewall@walltong.com
<b>AUTHORIZED TO COMMUNICATE VIA EMAIL</b>	No
<b>FEE INFORMATION</b>	
<b>NUMBER OF CLASSES</b>	1
<b>FEE PER CLASS</b>	325
<b>*TOTAL FEE DUE</b>	325
<b>*TOTAL FEE PAID</b>	325
<b>SIGNATURE INFORMATION</b>	
<b>SIGNATURE</b>	/EJ Wall/
<b>SIGNATORY'S NAME</b>	Eamon J Wall
<b>SIGNATORY'S</b>	



<b>POSITION</b>	Attorney of Record, NJ Bar
<b>DATE SIGNED</b>	08/26/2009

---

## Trademark/Service Mark Application, Principal Register

**Serial Number: 77813416**

**Filing Date: 08/26/2009**

### To the Commissioner for Trademarks:

**MARK:** CHURRASCARIA BOI NA BRASA (stylized and/or with design, see [mark](#))

The literal element of the mark consists of CHURRASCARIA BOI NA BRASA.

The applicant is not claiming color as a feature of the mark. The mark consists of words CHURRASCARIA BOI NA BRASA surrounding gaucho carving meat.

The applicant, Terra Sul Corporation, AKA Churrascaria Boi Na Brasa, a corporation of New Jersey, having an address of

Store #4,  
70 Adams Street  
Newark, New Jersey 07105  
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 043: RESTAURANT AND BAR SERVICES; RESTAURANT SERVICES; RESTAURANT AND CATERING SERVICES; RESTAURANT AND CAFE SERVICES; TAKE OUT RESTAURANT SERVICES

In International Class 043, the mark was first used at least as early as 04/01/1996, and first used in commerce at least as early as 04/01/1996, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) menu bearing the mark.

#### Original PDF file:

[spec-1731514481-161620165\\_.CHURRASCARIA\\_BOI\\_NA\\_BRASA\\_SPECIMEN.pdf](#)

#### Converted PDF file(s) (1 page)

[Specimen File1](#)

The English translation of CHURRASCARIA and BOI NA BRASA in the mark is BARBECUE RESTAURANT OR STEAK HOUSE and OX IN EMBERS.

#### The applicant's current Attorney Information:

Eamon J Wall and Kin-Wah Tong; Diana J Rea; Michael Bentley; Emmanuel Coffy; Jimmy Kim; Yelena Morozova; Christopher M Panagos of Wall & Tong, LLP  
595 Shrewsbury Avenue  
Shrewsbury, New Jersey 07702

United States

The attorney docket/reference number is TSUL/T004.

The applicant's current Correspondence Information:

Eamon J Wall

Wall & Tong, LLP

595 Shrewsbury Avenue

Shrewsbury, New Jersey 07702

7328428110(phone)

7328428388(fax)

ewall@walltong.com (not authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

### **Declaration**

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /EJ Wall/ Date Signed: 08/26/2009

Signatory's Name: Eamon J Wall

Signatory's Position: Attorney of Record, NJ Bar

RAM Sale Number: 3208

RAM Accounting Date: 08/27/2009

Serial Number: 77813416

Internet Transmission Date: Wed Aug 26 16:54:04 EDT 2009

TEAS Stamp: USPTO/BAS-173.15.144.81-2009082616540481

4187-77813416-400cbf5b9d12c1da4d3bf24573

123a9f9-CC-3208-20090826161620165141

# CHURRASCARIA



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CHURRASCARIA



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# CHURRASCARIA





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Featuring different  
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# EXHIBIT I

**Generated on:** This page was generated by TSDR on 2012-10-18 10:49:42 EST

**Mark:** BOI NA BRASA

BOI NA BRASA

**US Serial Number:** 77813335

**Application Filing Date:** Aug. 26, 2009

**Register:** Principal

**Mark Type:** Service Mark

**Status:** Suspension check completed. Application remains suspended.

**Status Date:** Jun. 11, 2012

---

### Mark Information

---

**Mark Literal Elements:** BOI NA BRASA

**Standard Character Claim:** Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

**Mark Drawing Type:** 4 - STANDARD CHARACTER MARK

**Translation:** The English translation of BOI NA BRASA in the mark is ox in embers.

---

### Goods and Services

---

**Note:**

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((.)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks \*.\* identify additional (new) wording in the goods/services.

**For:** RESTAURANT AND BAR SERVICES; RESTAURANT SERVICES;  
RESTAURANT AND CATERING SERVICES; RESTAURANT AND CAFE  
SERVICES; TAKE OUT RESTAURANT SERVICES

**International Class:** 043 - Primary Class

**U.S Class:** 100, 101

**Class Status:** ACTIVE

**Basis:** 1(a)

**First Use:** Apr. 01, 1996

**Use in Commerce:** Apr. 01, 1996

---

### Basis Information (Case Level)

---

<b>Filed Use:</b>	Yes	<b>Currently Use:</b>	Yes	<b>Amended Use:</b>	No
<b>Filed ITU:</b>	No	<b>Currently ITU:</b>	No	<b>Amended ITU:</b>	No
<b>Filed 44D:</b>	No	<b>Currently 44D:</b>	No	<b>Amended 44D:</b>	No
<b>Filed 44E:</b>	No	<b>Currently 44E:</b>	No	<b>Amended 44E:</b>	No
<b>Filed 66A:</b>	No	<b>Currently 66A:</b>	No		
<b>Filed No Basis:</b>	No	<b>Currently No Basis:</b>	No		

---

### Current Owner(s) Information

---

**Owner Name:** Terra Sul Corporation

**DBA, AKA, Formerly:** AKA Churrascaria Boi Na Brasa

**Owner Address:** Store #4  
70 Adams Street  
Newark, NEW JERSEY 07105  
UNITED STATES

**Legal Entity Type:** CORPORATION

**State or Country Where Organized:** NEW JERSEY

---

### Attorney/Correspondence Information

---

#### Attorney of Record

**Attorney Name:** Eamon J Wall

**Docket Number:** TSUL/T003

#### Correspondent

**Correspondent Name/Address:** Eamon J Wall  
Wall & Tong, LLP  
25 James Way  
Eatontown, NEW JERSEY 07724  
UNITED STATES

**Phone:** 732 542 2280

**Fax:** 732 542 2283

Correspondent e-mail: [ewall@walltong.com](mailto:ewall@walltong.com)

Correspondent e-mail Authorized: No

**Domestic Representative - Not Found**

---

**Prosecution History**

---

Date	Description	Proceeding Number
Jun. 11, 2012	REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED	70884
Dec. 06, 2011	REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED	70884
Jun. 03, 2011	REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED	70884
Nov. 30, 2010	REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED	70884
Nov. 30, 2010	ASSIGNED TO LIE	70884
Jul. 20, 2010	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
May 25, 2010	LETTER OF SUSPENSION MAILED	
May 24, 2010	SUSPENSION LETTER WRITTEN	83223
May 24, 2010	EXAMINERS AMENDMENT MAILED	
May 24, 2010	EXAMINER'S AMENDMENT ENTERED	88888
May 24, 2010	EXAMINERS AMENDMENT -WRITTEN	83223
Dec. 04, 2009	NON-FINAL ACTION MAILED	
Dec. 04, 2009	NON-FINAL ACTION WRITTEN	83223
Dec. 01, 2009	ASSIGNED TO EXAMINER	83223
Sep. 02, 2009	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Sep. 01, 2009	NEW APPLICATION ENTERED IN TRAM	

---

**TM Staff and Location Information**

---

**TM Staff Information**

TM Attorney:	BIDDULPH, HEATHER ANN	Law Office Assigned:	LAW OFFICE 104
--------------	--------------------------	-------------------------	----------------

**File Location**

**Current Location:** TMEG LAW OFFICE 104

**Date in Location:** Jun. 11, 2012

## Change Of Correspondence Address

---

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77813335
LAW OFFICE ASSIGNED	LAW OFFICE 104
MARK SECTION	
MARK	BOI NA BRASA
CORRESPONDENCE SECTION (current)	
ORIGINAL ADDRESS	EAMON J WALL WALL & TONG, LLP 595 SHREWSBURY AVE SHREWSBURY, NJ 07702-4158 7328428110 7328428388 ewall@walltong.com
NEW CORRESPONDENCE ADDRESS	
NEW ADDRESS	Eamon J Wall Wall & Tong, LLP 25 James Way Eatontown New Jersey United States 07724 732 542 2280 732 542 2283 ewall@walltong.com
SIGNATURE SECTION	
SIGNATURE	/EJ Wall/
SIGNATORY NAME	Eamon J Wall
SIGNATORY DATE	07/20/2010
SIGNATORY POSITION	Attorney of Record, NJ
AUTHORIZED SIGNATORY	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Tue Jul 20 16:33:41 EDT 2010

**TEAS STAMP**

USPTO/CCA-173.15.144.81-2  
0100720163341328755-77813  
335-4709fd16bd14e38b22982  
1c263a3bc0c04b-N/A-N/A-20  
100720163201788770

**Trademark Snap Shot Amendment & Mail Processing Stylesheet**  
(Table presents the data on Amendment & Mail Processing Complete)

**OVERVIEW**

SERIAL NUMBER	77813335	FILING DATE	08/26/2009
REG NUMBER	0000000	REG DATE	N/A
REGISTER	PRINCIPAL	MARK TYPE	SERVICE MARK
INTL REG #	N/A	INTL REG DATE	N/A
TM ATTORNEY	BIDDULPH, HEATHER ANN	L.O. ASSIGNED	104

**PUB INFORMATION**

RUN DATE	05/25/2010		
PUB DATE	N/A		
STATUS	652-SUSPENSION LETTER COUNTED - NOT MAILED		
STATUS DATE	05/24/2010		
LITERAL MARK ELEMENT	BOI NA BRASA		
DATE ABANDONED	N/A	DATE CANCELLED	N/A
SECTION 2F	NO	SECTION 2F IN PART	NO
SECTION 8	NO	SECTION 8 IN PART	NO
SECTION 15	NO	REPUB 12C	N/A
RENEWAL FILED	NO	RENEWAL DATE	N/A
DATE AMEND REG	N/A		

**FILING BASIS**

FILED BASIS		CURRENT BASIS		AMENDED BASIS	
1 (a)	YES	1 (a)	YES	1 (a)	NO
1 (b)	NO	1 (b)	NO	1 (b)	NO
44D	NO	44D	NO	44D	NO
44E	NO	44E	NO	44E	NO
66A	NO	66A	NO		
NO BASIS	NO	NO BASIS	NO		

**MARK DATA**

STANDARD CHARACTER MARK	YES
LITERAL MARK ELEMENT	BOI NA BRASA



MARK DRAWING CODE	4-STANDARD CHARACTER MARK
COLOR DRAWING FLAG	NO

### CURRENT OWNER INFORMATION

PARTY TYPE	10-ORIGINAL APPLICANT
NAME	Terra Sul Corporation
ADDRESS	Store #4 70 Adams Street Newark, NJ 07105
ENTITY	03-CORPORATION
CITIZENSHIP	New Jersey
DBA/AKA	AKA Churrascaria Boi Na Brasa

### GOODS AND SERVICES

INTERNATIONAL CLASS	043
DESCRIPTION TEXT	RESTAURANT AND BAR SERVICES; RESTAURANT SERVICES; RESTAURANT AND CATERING SERVICES; RESTAURANT AND CAFE SERVICES; TAKE OUT RESTAURANT SERVICES

### GOODS AND SERVICES CLASSIFICATION

INTERNATIONAL CLASS	043	FIRST USE DATE	04/01/1996	FIRST USE IN COMMERCE DATE	04/01/1996	CLASS STATUS	6-ACTIVE
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### MISCELLANEOUS INFORMATION/STATEMENTS

CHANGE IN REGISTRATION	NO
TRANSLATION	The English translation of BOI NA BRASA in the mark is ox in embers.

### PROSECUTION HISTORY

DATE	ENT CD	ENT TYPE	DESCRIPTION	ENT NUM
05/24/2010	CNSL	R	SUSPENSION LETTER WRITTEN	009
05/24/2010	CNEA	O	EXAMINERS AMENDMENT MAILED	008
05/24/2010	XAEC	I	EXAMINER'S AMENDMENT ENTERED	007
05/24/2010	CNEA	R	EXAMINERS AMENDMENT -WRITTEN	006
12/04/2009	CNRT	F	NON-FINAL ACTION MAILED	005
12/04/2009	CNRT	R	NON-FINAL ACTION WRITTEN	004

12/01/2009	DOCK	D	ASSIGNED TO EXAMINER	003
09/02/2009	NWOS	I	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	002
09/01/2009	NWAP	I	NEW APPLICATION ENTERED IN TRAM	001

### CURRENT CORRESPONDENCE INFORMATION

ATTORNEY	Eamon J Wall
CORRESPONDENCE ADDRESS	EAMON J WALL WALL & TONG, LLP 595 SHREWSBURY AVE SHREWSBURY, NJ 07702-4158
DOMESTIC REPRESENTATIVE	NONE

BOI NA BRASA

**UNITED STATES PATENT AND TRADEMARK OFFICE**

**SERIAL NO:** 77813335

**MARK:** BOI NA BRASA

**\*77813335\***

**CORRESPONDENT ADDRESS:**

EAMON J WALL  
WALL & TONG, LLP  
595 SHREWSBURY AVE  
SHREWSBURY, NJ 07702-4158

**GENERAL TRADEMARK INFORMATION:**

<http://www.uspto.gov/main/trademarks.htm>

**APPLICANT:** Terra Sul Corporation

**CORRESPONDENT'S REFERENCE/DOCKET**

**NO:** TSUL/T003

**CORRESPONDENT E-MAIL ADDRESS:**

**EXAMINER'S AMENDMENT**

**ISSUE/MAILING DATE:**

**AMENDMENT:** In accordance with the authorization granted by EAMON J WALL on May 20, 2010, the application has been AMENDED as indicated below. Please advise the undersigned examining attorney immediately if there is an objection to the amendment. Otherwise, no response is necessary. TMEP §707.

If the identification of goods and/or services has been amended, please note that any future amendments must be in accordance with 37 C.F.R. §2.71(a) and TMEP §1402.07(e).

The applicant wishes to wait for final disposition of the prior pending application before submitting arguments regarding the Section 2(d) refusal as to the mark in U.S. Registration No. 2666968.

The refusal under Section 2(d) as to the mark in U.S. Registration No. 2666968 and finding of a potential likelihood of confusion with the mark in the cited prior pending Application Serial No. 77779339 are continued and maintained.

A letter of suspension will follow this examiner's amendment.

/Heather Biddulph/  
Heather Biddulph  
Law Office 104

Phone No. (571) 272-8190

Fax No. (571) 273-8190

**STATUS CHECK:** Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

# UNITED STATES PATENT AND TRADEMARK OFFICE

**SERIAL NO:** 77813335

**MARK:** BOI NA BRASA

**\*77813335\***

**CORRESPONDENT ADDRESS:**

EAMON J WALL  
WALL & TONG, LLP  
595 SHREWSBURY AVE  
SHREWSBURY, NJ 07702-4158

**GENERAL TRADEMARK INFORMATION:**  
<http://www.uspto.gov/main/trademarks.htm>

**APPLICANT:** Terra Sul Corporation

**CORRESPONDENT'S REFERENCE/DOCKET  
NO:**

TSUL/T003

**CORRESPONDENT E-MAIL ADDRESS:**

## NOTICE OF SUSPENSION

**ISSUE/MAILING DATE:**

**SUSPENSION PROCEDURE:** This suspension notice serves to suspend action on the application for the reason(s) specified below. No response is needed. However, if you wish to respond to this notice, you should use the "Response to Letter of Suspension" form found at <http://teasroa.uspto.gov/rsi/rsi>. The Office will conduct periodic status checks to determine if suspension remains appropriate.

Action on this application is suspended pending the disposition of:

- Application Serial No(s). **77779339**

Since applicant's effective filing date is subsequent to the effective filing date of the above-identified application(s), the latter, if and when it registers, may be cited against this application in a refusal to register under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d). See 37 C.F.R. §2.83; TMEP §§1208 et seq. A copy of information relevant to this pending application(s) **was sent previously**.

Applicant may submit a request to remove the application from suspension to present arguments related to the potential conflict between the relevant application(s) or other arguments related to the ground for suspension. TMEP §716.03. Applicant's election not to present arguments during suspension will not affect the applicant's right to present arguments later should a refusal in fact issue. If a refusal does issue, applicant will be afforded 6 months from the mailing or e-mailing date of the Office action to submit a

response. 15 U.S.C. §1062(b); 37 C.F.R. §2.62.

The following refusal(s)/requirement(s) is/are continued and maintained:

The refusal under Section 2(d) due to a likelihood of confusion with the mark in U.S. Registration No. 2666968.

/Heather Biddulph/  
Heather Biddulph  
Law Office 104  
Phone No. (571) 272-8190  
Fax No. (571) 273-8190

**STATUS CHECK:** Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

# UNITED STATES PATENT AND TRADEMARK OFFICE

**SERIAL NO:** 77/813335

**MARK:** BOI NA BRASA

**\*77813335\***

**CORRESPONDENT ADDRESS:**

EAMON J WALL  
WALL & TONG, LLP  
595 SHREWSBURY AVE  
SHREWSBURY, NJ 07702-4158

**RESPOND TO THIS ACTION:**

<http://www.uspto.gov/teas/eTEASpageD.htm>

**GENERAL TRADEMARK INFORMATION:**

<http://www.uspto.gov/main/trademarks.htm>

**APPLICANT:** Terra Sul Corporation

**CORRESPONDENT'S REFERENCE/DOCKET  
NO:**

TSUL/T003

**CORRESPONDENT E-MAIL ADDRESS:**

## OFFICE ACTION

TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE.

**ISSUE/MAILING DATE:**

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

### Section 2(d) Refusal – Likelihood Of Confusion

Registration of the applied-for mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. 2666968. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* See the enclosed registration.

Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely that a potential consumer would be confused or mistaken or deceived as to the source of the services of the applicant and registrant. *See* 15 U.S.C. §1052(d). The court in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) listed the principal factors to be considered when determining whether there is a likelihood of confusion under Section 2(d). *See* TMEP §1207.01. However, not all of the factors are necessarily relevant or of equal weight, and any one factor



may be dominant in a given case, depending upon the evidence of record. *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003); *see In re E. I. du Pont*, 476 F.2d at 1361-62, 177 USPQ at 567.

In this case, the following factors are the most relevant: similarity of the marks, similarity of the services, and similarity of trade channels of the services. *See In re Opus One, Inc.*, 60 USPQ2d 1812 (TTAB 2001); *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593 (TTAB 1999); *In re Azteca Rest. Enters., Inc.*, 50 USPQ2d 1209 (TTAB 1999); TMEP §§1207.01 *et seq.*

Applicant is applying for BOI NA BRASA for use with RESTAURANT AND BAR SERVICES; RESTAURANT SERVICES; RESTAURANT AND CATERING SERVICES; RESTAURANT AND CAFE SERVICES; TAKE OUT RESTAURANT SERVICES..

The prior registration is for BOI NA BRAZA and design for use with restaurant services.

#### Comparison of the Marks

In a likelihood of confusion determination, the marks are compared for similarities in their appearance, sound, meaning or connotation and commercial impression. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973); TMEP §1207.01(b). Similarity in any one of these elements may be sufficient to find a likelihood of confusion. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); *In re Lamson Oil Co.*, 6 USPQ2d 1041, 1043 (TTAB 1987); *see* TMEP §1207.01(b).

In this case, the marks are highly similar in pronunciation and meaning. The marks dominant wording “BOI NA BRAZA” and “BOI NA BRASA” are pronounced identically and have the same meaning. See translation statement in registration and application.

#### Comparison of the Services

The goods and/or services of the parties need not be identical or directly competitive to find a likelihood of confusion. *See Safety-Kleen Corp. v. Dresser Indus., Inc.*, 518 F.2d 1399, 1404, 186 USPQ 476, 480 (C.C.P.A. 1975); TMEP §1207.01(a)(i). Rather, it is sufficient that the goods and/or services are related in some manner and/or the conditions surrounding their marketing are such that they would be encountered by the same purchasers under circumstances that would give rise to the mistaken belief that the goods and/or services come from a common source. *In re Total Quality Group, Inc.*, 51 USPQ2d 1474, 1476 (TTAB 1999); TMEP §1207.01(a)(i); *see, e.g., On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086-87, 56 USPQ2d 1471, 1475-76 (Fed. Cir. 2000); *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 1566-68, 223 USPQ 1289, 1290 (Fed. Cir. 1984).

In this case, the services are identical.

The examining attorney must resolve any doubt regarding a likelihood of confusion in favor of the prior registrant. TMEP §1207.01(d)(i); *see Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1265, 62 USPQ2d 1001, 1003 (Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 464-65, 6 USPQ2d 1025, 1025 (Fed. Cir. 1988).

The similar commercial impression created by the marks and the relatedness of the identified services creates a likelihood of confusion among consumers as to the source of the services. Therefore, applicant's mark is refused registration under Section 2(d) of the Trademark Act.

Although applicant's mark has been refused registration, applicant may respond to the refusal(s) by submitting evidence and arguments in support of registration.

### **Prior Pending Application**

The filing date of pending Application Serial No. 77779339 precedes applicant's filing date. See attached referenced application. Further, the instant application is for the entire United States and includes overlapping geographic areas. If the mark in the referenced application registers, applicant's mark may be refused registration under Trademark Act Section 2(d) because of a likelihood of confusion between the two marks. See 15 U.S.C. §1052(d); 37 C.F.R. §2.83; TMEP §§1208 *et seq.* Therefore, upon receipt of applicant's response to this Office action, action on this application may be suspended pending final disposition of the earlier-filed referenced application.

In response to this Office action, applicant may present arguments in support of registration by addressing the issue of the potential conflict between applicant's mark and the mark in the referenced application. Applicant's election not to submit arguments at this time in no way limits applicant's right to address this issue later if a refusal under Section 2(d) issues.

***Nonetheless, applicant must respond at this time to the above refusal in order to avoid abandonment of the application.***

If applicant has questions about its application or this Office action, please contact the assigned trademark examining attorney at the telephone number below.

/Heather Biddulph/  
Heather Biddulph  
Law Office 104  
Phone No. (571) 272-8190  
Fax No. (571) 273-8190

**RESPOND TO THIS ACTION:** Applicant should file a response to this Office action online using the form at <http://www.uspto.gov/teas/eTEASpageD.htm>, waiting 48-72 hours if applicant received notification of the Office action via e-mail. For *technical* assistance with the form, please e-mail [TEAS@uspto.gov](mailto:TEAS@uspto.gov). For questions about the Office action itself, please contact the assigned examining attorney. **Do not respond to this Office action by e-mail; the USPTO does not accept e-mailed responses.**

If responding by paper mail, please include the following information: the application serial number, the mark, the filing date and the name, title/position, telephone number and e-mail address of the person signing the response. Please use the following address: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

**STATUS CHECK:** Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

**Print: Dec 3, 2009**

**76088982**

**DESIGN MARK**

**Serial Number**

76088982

**Status**

SECTION 8-ACCEPTED

**Word Mark**

BOI NA BRAZA

**Standard Character Mark**

No

**Registration Number**

2666968

**Date Registered**

2002/12/24

**Type of Mark**

SERVICE MARK

**Register**

PRINCIPAL

**Mark Drawing Code**

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

**Owner**

Boi Na Braza, Inc. CORPORATION TEXAS 415 Duncan Perry Road SUITE 330  
Arlington TEXAS 76051

**Goods/Services**

Class Status -- ACTIVE. IC 042. US 100 101. G & S: restaurant  
services. First Use: 2000/07/06. First Use In Commerce: 2000/07/06.

**Translation Statement**

The English translation of "BOI NA BRAZA" is "ox in embers".

**Filing Date**

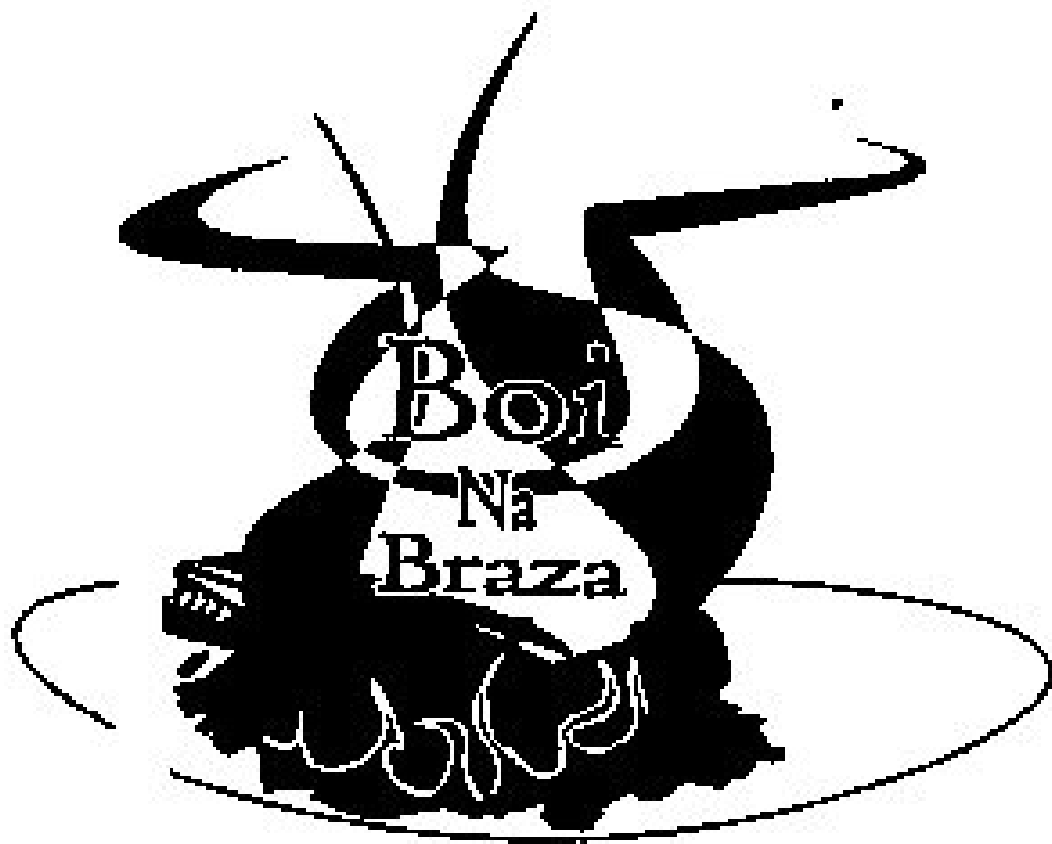
2000/07/14

**Examining Attorney**

MAHONEY, PAULA

**Attorney of Record**

Remy M. Davis



**DESIGN MARK**

**Serial Number**

77779339

**Status**

NON-FINAL ACTION - MAILED

**Word Mark**

BOI NA BRAZA

**Standard Character Mark**

Yes

**Type of Mark**

SERVICE MARK

**Register**

PRINCIPAL

**Mark Drawing Code**

(4) STANDARD CHARACTER MARK

**Owner**

Boi Na Braza, Inc. CORPORATION TEXAS 4025 William D. Tate Grapevine  
TEXAS 76051

**Goods/Services**

Class Status -- ACTIVE. IC 043. US 100 101. G & S: restaurant and  
bar services. First Use: 1999/07/19. First Use In Commerce:  
2000/09/11.

**Concurrent Use Statement**

Concurrent use information. Applicant seeks registration of the mark  
in connection with "restaurant and bar services" for the entire United  
States, except for the State of New Jersey. Terra Sul Corp., located  
at 70 Adams Street, Store No. 4, Newark, New Jersey 07105, claims to  
have used the mark CHURRASCARIA BOI NA BRASA in the State of New  
Jersey since 1996.

**Filing Date**

2009/07/13


**Examining Attorney**


LEIPZIG, MARC

**Attorney of Record**

Remy M. Davis

**BOI NA BRAZA**

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 **churrascaria**  
[ʃuxaʃka'ria] F

barbecue restaurant

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churrascao. (2006). In *Collins Portuguese Dictionary*. Retrieved from http://www.credoreference.com/entry/collinsport/churrascao

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  - brasa**
  - brasão
  - brasileiro

Bilingual Dictionaries > Collins Portuguese Dictionary

brasa

[ˈbɾazɐ] F

hot coal, **em brasa** red-hot, **pisar em brasa** to be on tenterhooks, **mandar brasa** (col) to go for it, **puxar a brasa para a sua sardinha** (col) to look out for o.s.

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brasa, (2006). In *Collins Portuguese Dictionary*. Retrieved from <http://www.credoreference.com/entry/collinsport/brasa>

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#	Total Marks	Dead Marks	Live Viewed Docs	Live Viewed Images	Status/ Search Duration	Search
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02	3013	N/A	0	0	0:02	*bo{"iy"}*[bi,ti] not dead[ld]
03	114803	N/A	0	0	0:04	*na*[bi,ti] not dead[ld]
04	1177	N/A	0	0	0:01	*bra{"sz"}*[bi,ti] not dead[ld]
05	4	0	4	4	0:01	2 and 3 and 4
06	172	0	172	140	0:01	2 and (3 4)
07	115912	N/A	0	0	0:01	3 4
08	68	0	68	58	0:01	3 and 4
09	89528	N/A	0	0	0:05	*o{"xckq"}{"sz"0:1}*[bi,ti] not dead[ld]
10	1298	N/A	0	0	0:03	*ember*[bi,ti] not dead[ld]
11	122	0	122	114	0:01	9 and 10
12	12517	N/A	0	0	0:04	*ox*[bi,ti] not dead[ld]
13	3	0	3	3	0:01	12 and 10
14	0	0	0	0	0:02	ox[gs] and "043"[ic]
15	0	0	0	0	0:02	ox[ds] and "043"[ic]
16	527	N/A	0	0	0:01	ox[bi,ti]
17	233	0	12	9	0:03	ox[bi,ti] not dead[ld]
18	6	1	5	5	0:02	"Boi Na Braza"[on]
19	95	N/A	0	0	0:01	(020107 - Cowboys)[on] not dead[ld]
20	435	N/A	0	0	0:01	(020110 - Men, Spaniards)[on] not dead[ld]
21	138	N/A	0	0	0:01	(020907 - Cooking, humans)[on] not dead[ld]
22	601	0	24	601	0:02	(020107 - Cowboys)[dc] not dead[ld]
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24	166	0	5	166	0:01	(020907 - Cooking, humans)[dc] not dead[ld]
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26	4	0	2	4	0:01	23 and 24

Session started 12/3/2009 9:04:07 AM

Session finished 12/3/2009 9:47:32 AM

Total search duration 0 minutes 46 seconds

Session duration 43 minutes 25 seconds

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Sent to TICRS as Serial Number: 77813335

# Trademark/Service Mark Application, Principal Register

Serial Number: 77813335

Filing Date: 08/26/2009

The table below presents the data as entered.

Input Field	Entered
<b>SERIAL NUMBER</b>	77813335
<b>MARK INFORMATION</b>	
<b>*MARK</b>	<a href="#">BOI NA BRASA</a>
<b>STANDARD CHARACTERS</b>	YES
<b>USPTO-GENERATED IMAGE</b>	YES
<b>LITERAL ELEMENT</b>	BOI NA BRASA
<b>MARK STATEMENT</b>	The mark consists of standard characters, without claim to any particular font, style, size, or color.
<b>REGISTER</b>	Principal
<b>APPLICANT INFORMATION</b>	
<b>*OWNER OF MARK</b>	Terra Sul Corporation
<b>DBA/AKA/TA/Formerly</b>	AKA Churrascaria Boi Na Brasa
<b>INTERNAL ADDRESS</b>	Store #4
<b>*STREET</b>	70 Adams Street
<b>*CITY</b>	Newark
<b>*STATE</b> (Required for U.S. applicants)	New Jersey
<b>*COUNTRY</b>	United States
<b>*ZIP/POSTAL CODE</b> (Required for U.S. applicants only)	07105
<b>LEGAL ENTITY INFORMATION</b>	
<b>TYPE</b>	corporation

<b>STATE/COUNTRY OF INCORPORATION</b>	New Jersey
<b>GOODS AND/OR SERVICES AND BASIS INFORMATION</b>	
<b>INTERNATIONAL CLASS</b>	043
<b>*IDENTIFICATION</b>	RESTAURANT AND BAR SERVICES; RESTAURANT SERVICES; RESTAURANT AND CATERING SERVICES; RESTAURANT AND CAFE SERVICES; TAKE OUT RESTAURANT SERVICES
<b>FILING BASIS</b>	SECTION 1(a)
<b>FIRST USE ANYWHERE DATE</b>	At least as early as 04/01/1996
<b>FIRST USE IN COMMERCE DATE</b>	At least as early as 04/01/1996
<b>SPECIMEN FILE NAME(S)</b>	
<b>ORIGINAL PDF FILE</b>	<a href="#">spec-1731514481-153937198_.BOI_NA_BRASA_specimen.pdf</a>
<b>CONVERTED PDF FILE(S) (1 page)</b>	<a href="#">\\TICRS\EXPORT7\IMAGEOUT7\778\133\77813335\xml1\APP0003.JPG</a>
<b>SPECIMEN DESCRIPTION</b>	NAPKIN BEARING THE MARK
<b>ADDITIONAL STATEMENTS SECTION</b>	
<b>TRANSLATION</b>	The English translation of BOI NA BRASA in the mark is ox in embers.
<b>ATTORNEY INFORMATION</b>	
<b>NAME</b>	Eamon J Wall
<b>ATTORNEY DOCKET NUMBER</b>	TSUL/T003
<b>FIRM NAME</b>	Wall & Tong, LLP
<b>STREET</b>	595 Shrewsbury Avenue
<b>CITY</b>	Shrewsbury
<b>STATE</b>	New Jersey
<b>COUNTRY</b>	United States
<b>ZIP/POSTAL CODE</b>	07702
<b>PHONE</b>	7328428110
<b>FAX</b>	7328428388
<b>EMAIL ADDRESS</b>	ewall@walltong.com
<b>AUTHORIZED TO</b>	

<b>COMMUNICATE VIA EMAIL</b>	No
<b>OTHER APPOINTED ATTORNEY</b>	Kin-Wah Tong; Diana J Rea; Michael Bentley; Emmanuel Coffy; Jimmy Kim; Yelena Morozova; Christopher M Panagos;
<b>CORRESPONDENCE INFORMATION</b>	
<b>NAME</b>	Eamon J Wall
<b>FIRM NAME</b>	Wall & Tong, LLP
<b>STREET</b>	595 Shrewsbury Avenue
<b>CITY</b>	Shrewsbury
<b>STATE</b>	New Jersey
<b>COUNTRY</b>	United States
<b>ZIP/POSTAL CODE</b>	07702
<b>PHONE</b>	7328428110
<b>FAX</b>	7328428388
<b>EMAIL ADDRESS</b>	ewall@walltong.com
<b>AUTHORIZED TO COMMUNICATE VIA EMAIL</b>	No
<b>FEE INFORMATION</b>	
<b>NUMBER OF CLASSES</b>	1
<b>FEE PER CLASS</b>	325
<b>*TOTAL FEE DUE</b>	325
<b>*TOTAL FEE PAID</b>	325
<b>SIGNATURE INFORMATION</b>	
<b>SIGNATURE</b>	/EJ Wall/
<b>SIGNATORY'S NAME</b>	Eamon J Wall
<b>SIGNATORY'S POSITION</b>	Attorney of Record, NJ Bar
<b>DATE SIGNED</b>	08/26/2009

---

## Trademark/Service Mark Application, Principal Register

**Serial Number: 77813335**

**Filing Date: 08/26/2009**

### To the Commissioner for Trademarks:

**MARK:** BOI NA BRASA (Standard Characters, see [mark](#))

The literal element of the mark consists of BOI NA BRASA.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Terra Sul Corporation, AKA Churrascaria Boi Na Brasa, a corporation of New Jersey, having an address of

Store #4,  
70 Adams Street  
Newark, New Jersey 07105  
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 043: RESTAURANT AND BAR SERVICES; RESTAURANT SERVICES; RESTAURANT AND CATERING SERVICES; RESTAURANT AND CAFE SERVICES; TAKE OUT RESTAURANT SERVICES

In International Class 043, the mark was first used at least as early as 04/01/1996, and first used in commerce at least as early as 04/01/1996, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) NAPKIN BEARING THE MARK.

### Original PDF file:

[spec-1731514481-153937198\\_.BOI\\_NA\\_BRASA\\_specimen.pdf](#)

### Converted PDF file(s) (1 page)

[Specimen File1](#)

The English translation of BOI NA BRASA in the mark is ox in embers.

The applicant's current Attorney Information:

Eamon J Wall and Kin-Wah Tong; Diana J Rea; Michael Bentley; Emmanuel Coffy; Jimmy Kim; Yelena Morozova; Christopher M Panagos; of Wall & Tong, LLP

595 Shrewsbury Avenue  
Shrewsbury, New Jersey 07702  
United States

The attorney docket/reference number is TSUL/T003.



The applicant's current Correspondence Information:

Eamon J Wall  
Wall & Tong, LLP  
595 Shrewsbury Avenue  
Shrewsbury, New Jersey 07702  
7328428110(phone)  
7328428388(fax)  
ewall@walltong.com (not authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

### **Declaration**

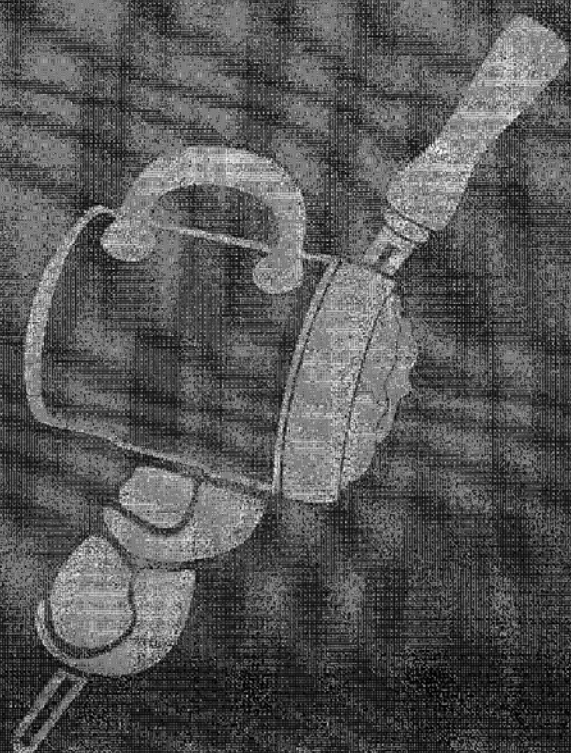
The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /EJ Wall/ Date Signed: 08/26/2009  
Signatory's Name: Eamon J Wall  
Signatory's Position: Attorney of Record, NJ Bar

RAM Sale Number: 2384  
RAM Accounting Date: 08/27/2009

Serial Number: 77813335  
Internet Transmission Date: Wed Aug 26 16:05:41 EDT 2009  
TEAS Stamp: USPTO/BAS-173.15.144.81-2009082616054164  
4802-77813335-4007cae472715ae380edb2ca79  
544d2927-CC-2384-20090826153937198153

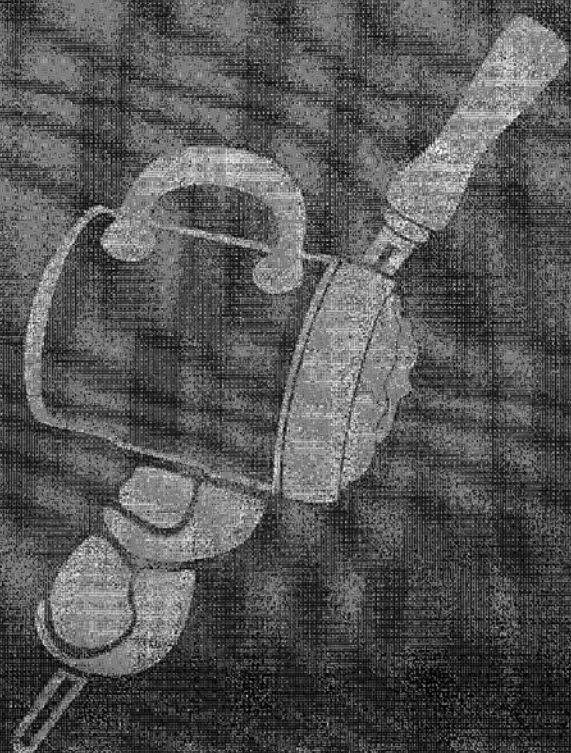
BOI NA BRASA



BOHN BRASA

bar & grill

BOI NA BRASA



BOHN BRASA

bar & grill

# EXHIBIT J

**Generated on:** This page was generated by TSDR on 2012-10-18 10:55:27 EST

**Mark:** BOI NA BRAZA



**US Serial Number:** 76088982

**Application Filing Date:** Jul. 14, 2000

**US Registration Number:** 2666968

**Registration Date:** Dec. 24, 2002

**Register:** Principal

**Mark Type:** Service Mark

**Status:** A Section 8 declaration has been accepted.

**Status Date:** Dec. 24, 2008

**Publication Date:** Feb. 19, 2002

**Notice of Allowance Date:** May 14, 2002

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### Mark Information

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**Mark Literal Elements:** BOI NA BRAZA

**Standard Character Claim:** No

**Mark Drawing Type:** 3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)

**Color(s) Claimed:** Color is not claimed as a feature of the mark.

**Translation:** The English translation of "BOI NA BRAZA" is "ox in embers".

**Design Search Code(s):**  
 03.07.01 - Cattle;Steers;Oxen, cows, calves, bulls  
 03.07.24 - Stylized bovines, deer, antelopes, goats, sheep, pigs, cows, bulls, buffalo, moose  
 26.03.02 - Plain single line ovals;Ovals, plain single line

---

### Goods and Services

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**Note:**

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((.)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks \*.\* identify additional (new) wording in the goods/services.

**For:** restaurant services

**International Class:** 042 - Primary Class

**U.S Class:** 100, 101

**Class Status:** ACTIVE

**Basis:** 1(a)

**First Use:** Jul. 06, 2000

**Use in Commerce:** Jul. 06, 2000

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### Basis Information (Case Level)

---

**Filed Use:** No      **Currently Use:** Yes      **Amended Use:** No

**Filed ITU:** Yes      **Currently ITU:** No      **Amended ITU:** No

**Filed 44D:** No      **Currently 44D:** No      **Amended 44D:** No

**Filed 44E:** No      **Currently 44E:** No      **Amended 44E:** No

**Filed 66A:** No      **Currently 66A:** No

**Filed No Basis:** No      **Currently No Basis:** No

---

### Current Owner(s) Information

---

**Owner Name:** BOI NA BRAZA, LLC

**Owner Address:** 4025 WILLIAM D. TATE AVE.  
GRAPEVINE, TEXAS 76051  
UNITED STATES

**Legal Entity Type:** LIMITED LIABILITY COMPANY

**State or Country Where Organized:** TEXAS

---

### Attorney/Correspondence Information

---

#### Attorney of Record

**Attorney Name:** Justin Welch

**Docket Number:** 020175.2



## Correspondent

**Correspondent  
Name/Address:**

Justin Welch  
THOMPSON & KNIGHT LLP  
1722 Routh Street, Suite 1500  
DALLAS, TEXAS 75201  
UNITED STATES

**Phone:** 214-969-1700**Fax:** 214-999-1634**Correspondent e-  
mail:**[justin.welch@tklaw.com](mailto:justin.welch@tklaw.com)**Correspondent e-  
mail Authorized:**

No

**Domestic Representative - Not Found**

---

## Prosecution History

---

Date	Description	Proceeding Number
Aug. 15, 2012	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Apr. 07, 2012	SEC. 15 ACKNOWLEDGEMENT - MAILED	
Apr. 07, 2012	REGISTERED - SEC. 15 ACKNOWLEDGED	67657
Apr. 07, 2012	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	67657
Feb. 06, 2012	TEAS SECTION 15 RECEIVED	
Dec. 24, 2008	REGISTERED - SEC. 8 (6-YR) ACCEPTED	66607
Dec. 08, 2008	ASSIGNED TO PARALEGAL	66607
Dec. 01, 2008	TEAS SECTION 8 RECEIVED	
Sep. 09, 2008	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Jan. 14, 2008	CASE FILE IN TICS	
Dec. 24, 2002	REGISTERED-PRINCIPAL REGISTER	
Oct. 15, 2002	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Oct. 11, 2002	ASSIGNED TO EXAMINER	76745
Oct. 10, 2002	STATEMENT OF USE PROCESSING COMPLETE	
Sep. 09, 2002	USE AMENDMENT FILED	
Sep. 09, 2002	PAPER RECEIVED	
May 14, 2002	NOA MAILED - SOU REQUIRED FROM APPLICANT	
Feb. 19, 2002	PUBLISHED FOR OPPOSITION	

Jan. 30, 2002 NOTICE OF PUBLICATION  
Sep. 24, 2001 APPROVED FOR PUB - PRINCIPAL REGISTER  
Jun. 13, 2001 CORRESPONDENCE RECEIVED IN LAW OFFICE  
Dec. 22, 2000 NON-FINAL ACTION MAILED

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### Maintenance Filings or Post Registration Information

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**Affidavit of Continued Use:** Section 8 - Accepted  
**Affidavit of Incontestability:** Section 15 - Accepted

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### TM Staff and Location Information

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#### TM Staff Information - None

#### File Location

**Current Location:** TMEG LAW OFFICE 101      **Date in Location:** Apr. 07, 2012

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### Assignment Abstract of Title Information

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#### Summary

**Total Assignments:** 1      **Registrant:** Boi Na Braza, Inc.

**Assignment 1 of 1**

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**Conveyance:** CHANGE OF NAME

**Reel/Frame:** [4839/0967](#)      **Pages:** 7

**Date Recorded:** Aug. 09, 2012

**Supporting Documents:** [assignment-tm-4839-0967.pdf](#)

#### Assignor

**Name:** [BOI NA BRAZA, INC.](#)      **Execution Date:** Aug. 13, 2009

**Legal Entity Type:** CORPORATION      **State or Country Where Organized:** TEXAS

#### Assignee

**Name:** [BOI NA BRAZA, LLC](#)

**Legal Entity Type:** LIMITED LIABILITY      **State or Country Where Organized:** TEXAS

COMPANY

Where Organized:

**Address:**

4025 WILLIAM D. TATE AVE.  
GRAPEVINE, TEXAS 76051

**Correspondent**

**Correspondent  
Name:**

CINDY HOLLAND

**Correspondent  
Address:**

1722 ROUTH STREET, SUITE 1500  
DALLAS, TX 75201

**Domestic Representative - Not Found**

Side - 1

	<b>NOTICE OF ACKNOWLEDGEMENT OF §15 DECLARATION MAILING DATE: Apr 7, 2012</b>
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The affidavit of incontestability filed in connection with the registration identified below meets the requirements of Section 15 of the Trademark Act, 15 U.S.C. §1065. The affidavit is acknowledged.

For further information about this notice, visit our website at: <http://www.uspto.gov>. To review information regarding the referenced registration, go to <http://tarr.uspto.gov/>.

**REG NUMBER:** 2666968  
**MARK:** BOI NA BRAZA AND DESIGN  
**OWNER:** Boi Na Braza, Inc.

Side - 2

UNITED STATES PATENT AND TRADEMARK OFFICE  
COMMISSIONER FOR TRADEMARKS  
P.O. BOX 1451  
ALEXANDRIA, VA 22313-1451

FIRST-CLASS MAIL U.S POSTAGE PAID
--

Justin Welch  
THOMPSON & KNIGHT LLP  
1722 Routh Street, Suite 1500  
DALLAS, TX 75201

## Declaration of Incontestability of a Mark under Section 15

The table below presents the data as entered.

Input Field	Entered
REGISTRATION NUMBER	2666968
REGISTRATION DATE	12/24/2002
SERIAL NUMBER	76088982
MARK SECTION	
MARK	BOI NA BRAZA (stylized and/or with design)
ATTORNEY SECTION (current)	
NAME	Remy M. Davis
FIRM NAME	THOMPSON & KNIGHT LLP
INTERNAL ADDRESS	1722 ROUTH STREET
STREET	SUITE 1500
CITY	DALLAS
STATE	Texas
POSTAL CODE	75201
COUNTRY	United States
PHONE	(214) 969-1700
FAX	(214) 969-1751
ATTORNEY SECTION (proposed)	
NAME	Justin Welch
FIRM NAME	THOMPSON & KNIGHT LLP
STREET	1722 Routh Street, Suite 1500
CITY	DALLAS
STATE	Texas
POSTAL CODE	75201

<b>COUNTRY</b>	United States
<b>PHONE</b>	214-969-1700
<b>FAX</b>	214-999-1634
<b>EMAIL</b>	justin.welch@tklaw.com
<b>DOCKET/REFERENCE NUMBER</b>	020175.2
<b>OTHER APPOINTED ATTORNEY</b>	Deborah L. Lively

#### **CORRESPONDENCE SECTION (current)**

<b>NAME</b>	REMY M. DAVIS
<b>FIRM NAME</b>	THOMPSON & KNIGHT LLP
<b>INTERNAL ADDRESS</b>	1722 ROUTH STREET
<b>STREET</b>	SUITE 1500
<b>CITY</b>	DALLAS
<b>STATE</b>	Texas
<b>POSTAL CODE</b>	75201
<b>COUNTRY</b>	United States
<b>PHONE</b>	(214) 969-1700
<b>FAX</b>	(214) 969-1751

#### **CORRESPONDENCE SECTION (proposed)**

<b>NAME</b>	Justin Welch
<b>FIRM NAME</b>	THOMPSON & KNIGHT LLP
<b>STREET</b>	1722 Routh Street, Suite 1500
<b>CITY</b>	DALLAS
<b>STATE</b>	Texas
<b>POSTAL CODE</b>	75201
<b>COUNTRY</b>	United States
<b>PHONE</b>	214-969-1700
<b>FAX</b>	214-999-1634
<b>EMAIL</b>	justin.welch@tklaw.com;deborah.lively@tklaw.com
<b>DOCKET/REFERENCE NUMBER</b>	020175.2

**GOODS AND/OR SERVICES SECTION**

<b>INTERNATIONAL CLASS</b>	042
<b>GOODS OR SERVICES</b>	restaurant services

**OWNER SECTION (current)**

<b>NAME</b>	Boi Na Braza, Inc.
<b>STREET</b>	415 Duncan Perry Road
<b>CITY</b>	Arlington
<b>STATE</b>	Texas
<b>ZIP/POSTAL CODE</b>	76051
<b>COUNTRY</b>	United States

**OWNER SECTION (proposed)**

<b>NAME</b>	Boi Na Braza, Inc.
<b>STREET</b>	4025 William D. Tate Ave.
<b>CITY</b>	Grapevine
<b>STATE</b>	Texas
<b>ZIP/POSTAL CODE</b>	76051
<b>COUNTRY</b>	United States

**LEGAL ENTITY SECTION (current)**

<b>TYPE</b>	corporation
<b>STATE/COUNTRY OF INCORPORATION</b>	Texas

**PAYMENT SECTION**

<b>NUMBER OF CLASSES</b>	1
<b>NUMBER OF CLASSES PAID</b>	1
<b>SUBTOTAL AMOUNT</b>	200
<b>TOTAL FEE PAID</b>	200

**SIGNATURE SECTION**

<b>ORIGINAL PDF FILE</b>	<a href="#">hw_16875201254-104056689_.Sect. 15 signed Declaration for BOI NA BRAZA_Design.pdf</a>
<b>CONVERTED PDF FILE(S) (1 page)</b>	<a href="#">\\TICRS\EXPORT11\IMAGEOUT11\760\889\76088982.xml1\S150002.JPG</a>

<b>SIGNATORY'S NAME</b>	Julio Cesar Matheus
<b>SIGNATORY'S POSITION</b>	President
<b>PAYMENT METHOD</b>	DA
<b>FILING INFORMATION</b>	
<b>SUBMIT DATE</b>	Mon Feb 06 11:04:14 EST 2012
<b>TEAS STAMP</b>	USPTO/SECT15-168.75.201.2 54-20120206110414456274-2 666968-490e736693c8733c19 402eefc3b22b1e81-DA-9092- 20120206104056689773

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**Declaration of Incontestability of a Mark under Section 15**  
**To the Commissioner for Trademarks:**

**REGISTRATION NUMBER:** 2666968

**REGISTRATION DATE:** 12/24/2002

**MARK:** (Stylized and/or with Design, BOI NA BRAZA)

The owner, Boi Na Braza, Inc., a corporation of Texas, having an address of  
4025 William D. Tate Ave.  
Grapevine, Texas 76051  
United States

is filing a Declaration of Incontestability of its mark under Section 15.

For International Class 042, the owner, or its related company, has continuously used the mark in commerce for five (5) consecutive years after the date of registration, or the date of publication under Section 12(c), and is still using the mark in commerce on or in connection with **all** goods or services listed in the existing registration for this class: restaurant services. Also, there has been no final decision adverse to the owner's claim of ownership of such mark for those goods or services, or to the owner's right to register the same or to keep the same on the register; and, there is no proceeding involving said rights pending and not disposed of in either the U.S. Patent and Trademark Office or the courts.

The registrant's current Attorney Information: Remy M. Davis of THOMPSON & KNIGHT LLP  
1722 ROUTH STREET  
SUITE 1500  
DALLAS, Texas (TX) 75201  
United States

The registrant's proposed Attorney Information: Justin Welch of THOMPSON & KNIGHT LLP  
1722 Routh Street, Suite 1500  
DALLAS, Texas (TX) 75201  
United States

The docket/reference number is 020175.2.

The Other Appointed Attorney(s): Deborah L. Lively.

The phone number is 214-969-1700.

The fax number is 214-999-1634.

The email address is justin.welch@tklaw.com.

The registrant's current Correspondence Information: REMY M. DAVIS of THOMPSON & KNIGHT LLP  
1722 ROUTH STREET  
SUITE 1500

DALLAS, Texas (TX) 75201  
United States

The registrant's proposed Correspondence Information: Justin Welch of THOMPSON & KNIGHT LLP  
1722 Routh Street, Suite 1500  
DALLAS, Texas (TX) 75201  
United States

The docket/reference number is 020175.2.

The phone number is 214-969-1700.

The fax number is 214-999-1634.

The email address is justin.welch@tklaw.com;deborah.lively@tklaw.com.

A fee payment in the amount of \$200 will be submitted with the form, representing payment for 1 class(es).

### **Declaration**

**Original PDF file:**

[hw 16875201254-104056689 . Sect. 15 signed Declaration for BOI NA BRAZA Design.pdf](#)

**Converted PDF file(s)** (1 page)

[Signature File1](#)

Signatory's Name: Julio Cesar Matheus

Signatory's Position: President

**Mailing Address (current):**

THOMPSON & KNIGHT LLP  
SUITE 1500  
DALLAS, Texas 75201

**Mailing Address (proposed):**

THOMPSON & KNIGHT LLP  
1722 Routh Street, Suite 1500  
DALLAS, Texas 75201

Serial Number: 76088982

Internet Transmission Date: Mon Feb 06 11:04:14 EST 2012

TEAS Stamp: USPTO/SECT15-168.75.201.254-201202061104

14456274-2666968-490e736693c8733c19402ee

fc3b22b1e81-DA-9092-20120206104056689773

### Declaration

The mark has been in continuous use in commerce for five (5) consecutive years after the date of registration, or the date of publication under Section 12(c), and is still in use in commerce. There has been no final decision adverse to the owner's claim of ownership of such mark, or to the owner's right to register the same or to keep the same on the register; and there is no proceeding involving said rights pending and not disposed of either in the U.S. Patent and Trademark Office or in the courts.

The undersigned being hereby warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of this document, declares that he/she is properly authorized to execute this document on behalf of the Owner; and all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true.

Signature Section

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Signatory's Name: \_\_\_\_\_

**ROUTING SHEET TO POST REGISTRATION (PRU)****Registration Number:** 2666968**Serial Number:** 76088982**RAM Sale Number:** 9092**RAM Accounting Date:** 20120206**Total Fees:** \$200

Note: Process in accordance with Post Registration Standard Operating Procedure (SOP)

<u>Transaction</u>	<u>Fee Code</u>	<u>Transaction Date</u>	<u>Fee per Class</u>	<u>Number of Classes</u>	<u>Number of Classes Paid</u>	<u>Total Fee</u>
§15 affidavit		20120206	\$200	1	1	\$200

Physical Location: 900 - FILE REPOSITORY (FRANCONIA)

Lost Case Flag: False

In TICRS (AM-FLG-IN-TICRS): True

**Transaction Date:** 20120206

### Declaration

The mark has been in continuous use in commerce for five (5) consecutive years after the date of registration, or the date of publication under Section 12(c), and is still in use in commerce. There has been no final decision adverse to the owner's claim of ownership of such mark, or to the owner's right to register the same or to keep the same on the register; and there is no proceeding involving said rights pending and not disposed of either in the U.S. Patent and Trademark Office or in the courts.

The undersigned being hereby warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of this document, declares that he/she is properly authorized to execute this document on behalf of the Owner; and all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true.

Signature Section

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Signatory's Name: \_\_\_\_\_

Side - 1

**NOTICE OF ACCEPTANCE OF §8  
DECLARATION  
MAILING DATE: Dec 24, 2008**

The declaration filed in connection with the registration identified below meets the requirements of Section 8 of the Trademark Act, 15 U.S.C. §1058. The declaration is accepted and the registration remains in force.

For further information about this notice, visit our website at: <http://www.uspto.gov>. To review information regarding the referenced registration, go to <http://tarr.uspto.gov>.

**REG NUMBER:** 2666968  
**MARK:** BOI NA BRAZA AND DESIGN  
**OWNER:** Boi Na Braza, Inc.

Side - 2

UNITED STATES PATENT AND TRADEMARK OFFICE  
COMMISSIONER FOR TRADEMARKS  
P.O. BOX 1451  
ALEXANDRIA, VA 22313-1451

FIRST-CLASS  
MAIL  
U.S POSTAGE  
PAID

Remy M. Davis  
Thompson & Knight LLP  
1722 Routh Street  
Suite 1500  
Dallas, TX 75201

## Declaration of Use of Mark in Commerce under Section 8

---

The table below presents the data as entered.

Input Field	Entered
REGISTRATION NUMBER	2666968
REGISTRATION DATE	12/24/2002
SERIAL NUMBER	76088982
MARK SECTION	
MARK	BOI NA BRAZA (stylized and/or with design)
OWNER SECTION (current)	
NAME	Boi Na Braza, Inc.
STREET	415 Duncan Perry Road
CITY	Arlington
STATE	Texas
ZIP/POSTAL CODE	76011
COUNTRY	United States
OWNER SECTION (proposed)	
NAME	Boi Na Braza, Inc.
INTERNAL ADDRESS	Suite 330
STREET	1452 Hughes Road
CITY	Grapevine
STATE	Texas
ZIP/POSTAL CODE	76051
COUNTRY	United States
ATTORNEY SECTION (current)	
NAME	KRISTY BULLARD MOTHERSBAUGH
FIRM NAME	Thompson & Knight LLP
INTERNAL ADDRESS	1722 Routh Street

<b>STREET</b>	Suite 1500
<b>CITY</b>	Dallas
<b>STATE</b>	Texas
<b>POSTAL CODE</b>	75201-2533
<b>COUNTRY</b>	United States
<b>PHONE</b>	(214) 969-1700
<b>FAX</b>	(214) 969-1751
<b>ATTORNEY DOCKET NUMBER</b>	20175.00003
<b>ATTORNEY SECTION (proposed)</b>	
<b>NAME</b>	Remy M. Davis
<b>FIRM NAME</b>	Thompson & Knight LLP
<b>INTERNAL ADDRESS</b>	Suite 1500
<b>STREET</b>	1722 Routh Street
<b>CITY</b>	Dallas
<b>STATE</b>	Texas
<b>POSTAL CODE</b>	75201
<b>COUNTRY</b>	United States
<b>PHONE</b>	(214) 969-1700
<b>FAX</b>	(214) 969-1751
<b>ATTORNEY DOCKET NUMBER</b>	020175.2
<b>OTHER APPOINTED ATTORNEY</b>	Herbert J. Hammond and Deborah L. Lively and Murali K. Pasupulati
<b>GOODS AND/OR SERVICES SECTION</b>	
<b>INTERNATIONAL CLASS</b>	042
<b>GOODS OR SERVICES</b>	KEEP ALL LISTED
<b>SPECIMEN FILE NAME(S)</b>	<a href="#">\\TICRS\EXPORT4\IMAGEOUT4\760\889\76088982.xml1\S0 80002.JPG</a>
<b>SPECIMEN DESCRIPTION</b>	image of webpage
<b>PAYMENT SECTION</b>	
<b>NUMBER OF CLASSES</b>	1
<b>NUMBER OF CLASSES PAID</b>	1



<b>SUBTOTAL AMOUNT</b>	100
<b>TOTAL FEE PAID</b>	100
<b>SIGNATURE SECTION</b>	
<b>SIGNATORY FILE NAME(S)</b>	<a href="\\TICRS\EXPORT4\IMAGEOUT4\760\889\76088982\xml1\S0 80003.JPG">\\TICRS\EXPORT4\IMAGEOUT4\760\889\76088982\xml1\S0 80003.JPG</a>
<b>SIGNATORY'S NAME</b>	Jonas S. Matheus
<b>SIGNATORY'S POSITION</b>	Corporate Secretary
<b>PAYMENT METHOD</b>	DA
<b>FILING INFORMATION</b>	
<b>SUBMIT DATE</b>	Mon Dec 01 16:01:44 EST 2008
<b>TEAS STAMP</b>	USPTO/SECT08-168.75.201.2 54-20081201160144022580-2 666968-40065181dc21f27ef7 07b5d22526bf82478-DA-1329 -20081201154515494552

---

**Declaration of Use of Mark in Commerce under Section 8**  
**To the Commissioner for Trademarks:**

**REGISTRATION NUMBER:** 2666968

**REGISTRATION DATE:** 12/24/2002

**MARK:** BOI NA BRAZA (stylized and/or with design)

The owner, Boi Na Braza, Inc., having an address of  
Suite 330  
1452 Hughes Road  
Grapevine, Texas 76051  
United States

is filing a Declaration of Use of Mark in Commerce under Section 8.

For International Class 042, the mark is in use in commerce on or in connection with **all** goods or services listed in the existing registration for this specific class; or, the owner is making the listed excusable nonuse claim.

The owner is submitting one specimen showing the mark as used in commerce on or in connection with any item in this class, consisting of a(n) image of webpage.

[Specimen File1](#)

The registrant hereby appoints Remy M. Davis and Herbert J. Hammond and Deborah L. Lively and Murali K. Pasupulati of Thompson & Knight LLP  
Suite 1500  
1722 Routh Street  
Dallas, Texas 75201  
United States

to file this Declaration of Use of Mark in Commerce under Section 8 on behalf of the registrant. The attorney docket/reference number is 020175.2.

A fee payment in the amount of \$100 will be submitted with the form, representing payment for 1 class(es), plus any additional grace period fee, if necessary.

**Declaration**

[Signature](#)

Signatory's Name: Jonas S. Matheus

Signatory's Position: Corporate Secretary

Mailing Address (**current**):

Thompson & Knight LLP  
Suite 1500  
Dallas, Texas 75201-2533

**Mailing Address (proposed):**

Thompson & Knight LLP  
1722 Routh Street  
Dallas, Texas 75201

Serial Number: 76088982

Internet Transmission Date: Mon Dec 01 16:01:44 EST 2008

TEAS Stamp: USPTO/SECT08-168.75.201.254-200812011601

44022580-2666968-40065181dc21f27ef707b5d

22526bf82478-DA-1329-2008120115451549455

2



## Bem-vindo a Boi Na Braza (Welcome to Boi Na Braza)

### The Dining Tradition from the Pampas of Southern Brazil

For any occasion, our award-winning restaurant offers a truly enjoyable and memorable dining experience.



- Sumptuous salad bar with delectable items to whet your appetite.
- Beef, pork, lamb and poultry ~ 15 selections deliciously seasoned and roasted over an open-fire.
- Brazilian Gauchos, continuously serving you tableside and at your convenience.
- Desserts, traditional or Brazilian specialties, will complete your meal.
- Extensive list of exquisite wines, champagnes, liquors and after dinner drinks.

Whether an intimate dinner for two, an employee lunch for 10 or a business meeting and meal for 50, our Brazilian Steak House is the perfect place.

Our fixed-price menu includes Brazilian Cheese bread and appetizers, the salad bar with hot side dishes and all 15 selections of beef, pork, lamb and poultry. You enjoy as much as you want and when you want it - with our unique Rodizio-style service. Our elegant yet fun atmosphere along with private customized dining areas will accommodate almost any need.

We are proud to share with you our food, traditions and culture ~ all in a beautiful setting. We invite you to explore our web site to learn more about our authentic Churrascaria style of dining.

**Declaration**

*Unless the owner has specifically claimed excusable non-use, the owner, or its related company, is using the mark in commerce on or in connection with the goods and/or services identified above, as evidenced by the attached specimen(s) showing the mark as used in commerce.*

The undersigned being hereby warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of this document, declares that he/she is properly authorized to execute this document on behalf of the Owner; and all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true.

**Signature Section**Signature: Date: 12-04-08Signatory's Name: THOMAS S. MATHEWSSignatory's Position: CORP. SEC.

**NOTE TO APPLICANT:** When filed as part of the electronic form (i.e., scanned and attached as an image file), the signature page **must** include both the signature information **and** the boilerplate declaration language. Do **not** include the entire application, but do ensure that the boilerplate declaration language actually appears; *a signature by itself will not be acceptable*. If, due to browser limitations, the boilerplate declaration language appears on a previous page when printed, you must "merge" the declaration and signature block onto a single page prior to signing, so that the *one complete page* can be scanned to create an acceptable image file. It is recommended that you copy-and-paste the entire text form into another document, manipulate the spacing there to move the declaration and signature section to a separate page, and then print this new version of the text form to send to the signatory.

**ROUTING SHEET TO POST REGISTRATION (PRU)****Registration Number:** 2666968**Serial Number:** 76088982**RAM Sale Number:** 1329**RAM Accounting Date:** 20081202**Total Fees:** \$100

Note: Process in accordance with Post Registration Standard Operating Procedure (SOP)

<u>Transaction</u>	<u>Fee Code</u>	<u>Transaction Date</u>	<u>Fee per Class</u>	<u>Number of Classes</u>	<u>Number of Classes Paid</u>	<u>Total Fee</u>
§8 affidavit	7205	20081201	\$100	1	1	\$100

Physical Location: 900 - FILE REPOSITORY (FRANCONIA)

Lost Case Flag: False

In TICRS (AM-FLG-IN-TICRS): True

**Transaction Date:** 20081201



## Bem-vindo a Boi Na Braza (Welcome to Boi Na Braza)

### The Dining Tradition from the Pampas of Southern Brazil

For any occasion, our award-winning restaurant offers a truly enjoyable and memorable dining experience.



- Sumptuous salad bar with delectable items to whet your appetite.
- Beef, pork, lamb and poultry ~ 15 selections deliciously seasoned and roasted over an open-fire.
- Brazilian Gauchos, continuously serving you tableside and at your convenience.
- Desserts, traditional or Brazilian specialties, will complete your meal.
- Extensive list of exquisite wines, champagnes, liquors and after dinner drinks.

Whether an intimate dinner for two, an employee lunch for 10 or a business meeting and meal for 50, our Brazilian Steak House is the perfect place.

Our fixed-price menu includes Brazilian Cheese bread and appetizers, the salad bar with hot side dishes and all 15 selections of beef, pork, lamb and poultry. You enjoy as much as you want and when you want it - with our unique Rodizio-style service. Our elegant yet fun atmosphere along with private customized dining areas will accommodate almost any need.

We are proud to share with you our food, traditions and culture ~ all in a beautiful setting. We invite you to explore our web site to learn more about our authentic Churrascaria style of dining.



**Declaration**

*Unless the owner has specifically claimed excusable non-use, the owner, or its related company, is using the mark in commerce on or in connection with the goods and/or services identified above, as evidenced by the attached specimen(s) showing the mark as used in commerce.*

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**Signature Section**Signature: Date: 12-04-08Signatory's Name: DONALD S. MATHEWSSignatory's Position: CORP. SEC.

**NOTE TO APPLICANT:** When filed as part of the electronic form (i.e., scanned and attached as an image file), the signature page **must** include both the signature information **and** the boilerplate declaration language. Do **not** include the entire application, but do ensure that the boilerplate declaration language actually appears; *a signature by itself will not be acceptable*. If, due to browser limitations, the boilerplate declaration language appears on a previous page when printed, you must "merge" the declaration and signature block onto a single page prior to signing, so that the *one complete page* can be scanned to create an acceptable image file. It is recommended that you copy-and-paste the entire text form into another document, manipulate the spacing there to move the declaration and signature section to a separate page, and then print this new version of the text form to send to the signatory.



## Change Of Correspondence Address

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The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	76088982
REGISTRATION NUMBER	2666968
LAW OFFICE ASSIGNED	LAW OFFICE 101
MARK SECTION	
MARK	BOI NA BRAZA (stylized and/or with design)
CORRESPONDENCE SECTION (current)	
ORIGINAL ADDRESS	KRISTY BULLARD MOTHERSBAUGH THOMPSON & KNIGHT LLP 1700 PACIFIC AVENUE, SUITE 3300 DALLAS TEXAS 75201-4693 United States
NEW CORRESPONDENCE ADDRESS	
NEW ADDRESS	REMY M. DAVIS Thompson & Knight LLP Suite 1500 1722 Routh Street Dallas Texas United States 75201-2533 (214) 969-1700 (214) 969-1751
SIGNATURE SECTION	
SIGNATURE	/Yanela Carpenter/
SIGNATORY NAME	Yanela O. Carpenter
SIGNATORY DATE	09/09/2008
SIGNATORY POSITION	Trademark Paralegal
FILING INFORMATION SECTION	
SUBMIT DATE	Tue Sep 09 13:16:54 EDT 2008
	USPTO/CCA-168.75.201.254-

**TEAS STAMP**

20080909131654300783-7574  
8967-400a4dbec648053e0c1e  
33921b8601bf961-N/A-N/A-2  
0080909131118304955

Trademark

76088982

TRADEMARK



76088982

PROSECUTION HISTORY

*Handwritten initials: JH*

	Entry	Date	Initials
1.	<i>Amended, Original</i>	DEC 26 2001	<i>LC</i>
2.	<i>SEP 24 2001</i>	<i>6/13/01</i>	
3.			
4.			
5.	NOP		
6.	2/19/02		
7.			
8.			
9.			
10.	NOA		
11.	5/14/02		
12.			
13.			
14.	OCT 14 2002 SOU FILED	<i>9-9-02</i>	<i>DD</i>
15.			
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## Post Registration

[illegible]



REG NUM: 2666968  
REG DT: 12/24/2002  
S/N 76/088982

76-088982 +



BOI NA BRAZA

PRINCIPAL

LAW OFFICE 101

76-088982 +

**FILING DATE**  
July 14, 2000

**ORIGINAL APPLICANT**  
Boi Na Braza, Inc.

**GOODS/SERVICES (CLASS 042)**  
restaurant services

**FILING BASIS**  
ITU

**ORIGINAL CORRESPONDENT**  
PRISCILLA L. DUNCHEL

Paula M. Mahoney

ATTORNEY ADVISOR:

Approved for Publication (Principal Register) (Signature/Date)

Paula M. Mahoney

Approved for Registration (Section 1(d)) (Signature/Date)

Paula M. Mahoney

Approved for Registration (Supplemental Register) (Signature/Date)

PUBLISHED  
02/19/02

NOA



Abandoned

(Date)



Boi Na Braza specially engraved, 3-piece silverware set available for purchase. Beer glasses and coffee mugs also available.



4025 WILLIAM D. TATE  
GRAPEVINE, TX 76051  
HWY. 121 BETWEEN HALL-JOHNSON  
& GLADE EXITS  
Metro 817.329.5514  
Toll Free 1.877.737.6080  
Fax 817.416.7451  
www.boinabraz.com



## Brazilian Steak House

We are proud to share with you our traditions, culture and food from the Pampas of Southern Brazil. The story of our Gauchos and our country is as robust as the meal you will enjoy at Boi Na Braza.

In the early 1800's, European immigrants settled in the Rio Grande do Sul area of Brazil. The fertile, grassy plains were perfect for finding new and better opportunities for their families. These Brazilian settlers were excellent horsemen, so they quickly became adept at raising and herding cattle imported from Cabo Verde. The settlers, our ancestors, became known as Gauchos.

The Gauchos were a strong and proud people who loved the land. In addition to raising cattle and other livestock, they farmed sweet and fresh vegetables and fruit. A unique type of cooking, inspired by the Gauchos, was called churrasco (pronounced shoo-rhaz-ko). After digging pits in the ground, the Gauchos would start a fire with wood from the rangelands of the Pampas.

Once the fire turned to embers, large portions of prime meats were skewered and slowly roasted to perfection over the fire pits. As groups of families would gather for meals, Gauchos would carry bountiful portions of skewered meats, along with fruits and vegetables to the table. Using traditional knives, which Gauchos wore on their belts, they sliced thin and tender pieces of meat. The succulent meats were served continuously to all.

In the mid-1900's, an enterprising Gaucho had the idea of turning this concept into a restaurant. He opened the first Churrascaria in the Brazilian state of Parana, home state of the owners of Boi Na Braza. This Gaucho served many different types of meats to his customers, continuously at their tables. This is called 'rodizio' style, meaning 'all around'.

This unique style of preparing and serving food is the tradition of the Brazilian Gaucho. The Churrascaria is now a staple of Brazilian life today - and an experience we would like to share with you in our Churrascaria.

Boi Na Braza, meaning 'steer over embers' in Portuguese, is proud to offer the tradition of our ancestors and our home with you.

Obrigado (Thank you!)



Enjoy The Dining  
Tradition Of  
Southern Brazil



**Boi Na Braza**  
Brazilian Steak House



[www.boinabraz.com](http://www.boinabraz.com)

★★★★ 4-Star Review -  
The Dallas Morning News





## Boi Na Braza Brazilian Steak House

Boi Na Braza proudly offers you over 19 selections of deliciously seasoned, open-fire roasted beef, lamb, pork and poultry.

Our Gauchos, all from Brazil, will continuously serve you tableside, at your request.

The lunch and dinner menus also include the salad bar featuring extraordinary fresh salads, different types of cheeses, imported prosciutto and delicious Brazilian hot dishes.

You will also enjoy Yucca, Fried Bananas and Polenta.

Select from over 200 wines and champagnes from around the world.

For dessert, try a Papaya Cream, Brazilian Flan, or one of our many other specialty dessert creations.

After dinner, relax with a fine-cigar, coffee and after-dinner drink.

All of this, in a beautiful and elegant setting.

*The dining tradition from the Pampas of Southern Brazil.*

Boi Na Braza ~ Bom Apetite



*Costela*  
BEEF RIBS  
*Alcatra*  
FULL TOP SIRLOIN  
*Tradicinha*  
BOTTOM SIRLOIN  
*Maminha*  
TRITIP SIRLOIN  
*Filet Mignon*  
BEEF TENDERLOIN  
*Filet Com Bacon*  
BEEF TENDERLOIN WITH BACON  
*Picanha*  
SPECIAL CUT FROM THE RUMPROAST  
*Picanha Nobre*  
PRIME CUT FROM THE RUMPROAST  
*Picanha Com Alho*  
RUMPROAST CUT WITH GARLIC  
*Costelinha De Porco*  
PORK RIBS  
*Lombinho*  
PORK LOIN  
*Lombinho Com Queijo*  
PORKLOIN WITH PARMESAN  
*Pernil De Cordeiro*  
LEG OF LAMB  
*Carne De Cordeiro*  
LAMB CHOPS  
*Salsichão*  
PORK SAUSAGE  
*Coxa De Frango*  
CHICKEN LEG  
*Sobrecoxa*  
CHICKEN THIGH  
*Peito De Frango Com Bacon*  
CHICKEN BREAST WITH BACON  
*Coração De Frango*  
CHICKEN HEART

Lunch - Monday thru Friday - 11 AM - 2 PM

**\$23<sup>99</sup>**

**\$17<sup>99</sup>** Salad Bar Only **\$12<sup>99</sup>** Children 7-12 Years

Lunch - Sunday - 11 AM - 2 PM

**\$28<sup>99</sup>**

**\$19<sup>99</sup>** Salad Bar Only **\$15<sup>99</sup>** Children 7-12 Years

Dinner - Monday thru Thursday - 5 PM - 10 PM

Friday and Saturday - 5 PM - 10:30 PM

Sunday - 5 PM - 9:30 PM

**\$38<sup>99</sup>**

**\$29<sup>99</sup>** Salad Bar Only **\$19<sup>99</sup>** Children 7-12 Years

- Children 6 years of age or under will not be charged.
- Drinks, desserts, tax and gratuity are not included in the price.
- Credit Cards accepted: American Express, Visa, Mastercard, Diners Club and Discover.
- Checks not accepted.
- Gift Certificates are available upon request.
- Private rooms available for special events and banquets.
- Complimentary valet parking.



4025 WILLIAM D. TATE  
GRAPEVINE, TX 76051  
HWY. 121 BETWEEN HALL-JOHNSON  
& GLADE EXITS  
Metro 817.329.5514  
Toll Free 1.877.737.6080  
Fax 817.416.7451  
www.boinabraz.com

# TRADEMARK EXAMINATION WORKSHEET

☐ AMENDMENT STAGE

☒ NO CHANGE

☒ PUBLICATION/REGISTRATION STAGE

Name: ANTJUAN RIVERA

L.O. 104

Date OCT 24 2002

Serial No. 74/75/76/78

088987

INSTRUCTIONS: Place a check mark in the appropriate column and/or box to indicate which data elements have been amended/coded.

## Legal Instrument Examiner (LIE)

	Amended	Data Element	
Class Data	<input type="checkbox"/>	<input type="checkbox"/> Prime/International Class	<input type="checkbox"/> Goods and Services
	<input type="checkbox"/>	<input type="checkbox"/> First Use Date	<input type="checkbox"/> First Use in Commerce Date
	<input type="checkbox"/>	<input type="checkbox"/> In Another Form	<input type="checkbox"/> Certification
	<input type="checkbox"/>	<input type="checkbox"/> 1b	
Mark Data	<input type="checkbox"/>	<input type="checkbox"/> Word Mark	<input type="checkbox"/> Pseudo Mark
	<input type="checkbox"/>	<input type="checkbox"/> Mark Drawing Code	<input type="checkbox"/> Design Search Code
	<input type="checkbox"/>	<input type="checkbox"/> Scan Sub Drawing	
Misc. Mark Data	<input type="checkbox"/>	<input type="checkbox"/> Mark Description	<input type="checkbox"/> Disclaimer
	<input type="checkbox"/>	<input type="checkbox"/> Lining/Stippling	<input type="checkbox"/> Name/Portrait/Consent
	<input type="checkbox"/>	<input type="checkbox"/> Translation	
Section 2(f)	<input type="checkbox"/>	<input type="checkbox"/> Section 2(f) Entire Mark	
	<input type="checkbox"/>	<input type="checkbox"/> Section 2(f) Limitation Statement	<input type="checkbox"/> Section 2(f) in Part
	<input type="checkbox"/>	<input type="checkbox"/> Amended Register	<input type="checkbox"/> Amended Register Date
Foreign Reg. Data	<input type="checkbox"/>	<input type="checkbox"/> Foreign Country	<input type="checkbox"/> 44(d)
	<input type="checkbox"/>	<input type="checkbox"/> Foreign Application Number	<input type="checkbox"/> Foreign Application Filing Date
	<input type="checkbox"/>	<input type="checkbox"/> Foreign Registration Number	<input type="checkbox"/> Foreign Registration Date
	<input type="checkbox"/>	<input type="checkbox"/> Foreign Registration Expiration Date	<input type="checkbox"/> Foreign Renewal Reg. Number
	<input type="checkbox"/>	<input type="checkbox"/> Foreign Reg. Renewal Expiration Date	<input type="checkbox"/> Foreign Renewal Reg. Date
Owner Data	<input type="checkbox"/>	<input type="checkbox"/> Owner Name	<input type="checkbox"/> DBA/AKA/TA
	<input type="checkbox"/>	<input type="checkbox"/> Address 1	<input type="checkbox"/> Address 2
	<input type="checkbox"/>	<input type="checkbox"/> City	<input type="checkbox"/> State
	<input type="checkbox"/>	<input type="checkbox"/> Zip Code	
	<input type="checkbox"/>	<input type="checkbox"/> Citizenship	<input type="checkbox"/> Entity
	<input type="checkbox"/>	<input type="checkbox"/> Entity Statement	<input type="checkbox"/> Composed of
	<input type="checkbox"/>	<input type="checkbox"/> Assignment(s)/Name Change	
Amd/Corr Restr.	<input type="checkbox"/>	<input type="checkbox"/> Concurrent Use	
Prior U.S. Reg.	<input type="checkbox"/>	<input type="checkbox"/> Prior Registration	
Correspondence	<input type="checkbox"/>	<input type="checkbox"/> Attorney	<input type="checkbox"/> Domestic Representative
	<input type="checkbox"/>	<input type="checkbox"/> Attorney Docket Number	
	<input type="checkbox"/>	<input type="checkbox"/> Correspondence Firm Name/Address	

I certify that all corrections have been entered in accordance with text editing guidelines.

A.R.

LIE

OCT 24

DATE



U.S. Patent and Trademark Office (PTO)  
**NOTICE OF ALLOWANCE**

(NOTE: If any data on this notice is incorrect, please submit a written request for correction of the NOA to: Assistant Commissioner for Trademarks, Box 1TU, 2900 Crystal Drive, Arlington, VA 22202-3513. Please include the serial number of your application on ALL correspondence with the PTO. 15 U.S.C. 1063(b)(2))

**ISSUE DATE OF NOA:** May 14, 2002

KRISTY BULLARD MOTHERSBAUGH  
THOMPSON & KNIGHT LLP  
1700 PACIFIC AVENUE, SUITE 3300  
DALLAS, TEXAS 75201-4693

ATTORNEY  
REFERENCE NUMBER  
20175.00003

**\*\* IMPORTANT INFORMATION: 6 MONTH DEADLINE \*\***

To avoid ABANDONMENT of this application, either a "Statement of Use" (a.k.a. "Allegation of Use") or a "Request for Extension of Time to File a Statement of Use" (a.k.a. "Extension Request") and the appropriate fee(s) must be received in the PTO within six months of the issue date of this Notice Of Allowance (NOA) for those goods and/or services based on intent to use. Failure to do so will result in the ABANDONMENT of this application.

Please note that both the "Statement of Use" and "Extension Request" have many legal requirements, including fees. These requirements are explained in the PTO booklet "Basic Facts About Trademarks", which can be obtained upon request at (703)308-9000. In addition, there are printed forms contained in this booklet (for "Statements of Use" and "Extension Requests") for your use.

**The following information should be reviewed for accuracy:**

SERIAL NUMBER: 76/088982  
MARK: B01 NA BRAZA (AND DESIGN)  
OWNER: Boi Na Braza, Inc.  
415 Duncan Perry Road  
Arlington, TEXAS 76011

This application has the following bases, but not necessarily for all listed goods/services:  
Section 1(a): NO      Section 1(b): YES      Section 44(e): NO

**GOODS/SERVICES BY INTERNATIONAL CLASS**

042—restaurant services

ALL OF THE GOODS/SERVICES IN EACH CLASS ARE LISTED



**UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office**

ASSISTANT COMMISSIONER FOR TRADEMARKS  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

Jan 30, 2002

**NOTICE OF PUBLICATION UNDER 12(a)**

- |                                      |  |
|--------------------------------------|--|
| 1. Serial No.:<br>76/088,982         | 2. Mark:<br>BOI NA BRAZA<br>and design |
| 3. International Class(es):<br>42    |  |
| 4. Publication Date:<br>Feb 19, 2002 | 5. Applicant:<br>Boi Na Braza, Inc.    |

The mark of the application identified appears to be entitled to registration. The mark will, in accordance with Section 12(a) of the Trademark Act of 1946, as amended, be published in the Official Gazette on the date indicated above for the purpose of opposition by any person who believes he will be damaged by the registration of the mark. If no opposition is filed within the time specified by Section 13(a) of the Statute or by rules 2.101 or 2.102 of the Trademark Rules, the Commissioner of Patents and Trademarks may issue a notice of allowance pursuant to section 13(b) of the Statute.

Copies of the trademark portion of the Official Gazette containing the publication of the mark may be obtained from:

The Superintendent of Documents  
U.S. Government Printing Office  
PO Box 371954  
Pittsburgh, PA 15250-7954  
Phone: (202)512-1800

By direction of the Commissioner.

KRISTY BULLARD MOTHERSBAUGH  
THOMPSON & KNIGHT LLP  
1700 PACIFIC AVENUE, SUITE 3300  
DALLAS, TEXAS 75201-4693

TMP&I

# TRADEMARK EXAMINATION WORKSHEET

☐ AMENDMENT STAGE

☒ NO CHANGE


☒ PUBLICATION/REGISTRATION STAGE

Name: RADIAH HILLIARD L.O. 101

Date 12/4/01 Serial No. 76088982

INSTRUCTIONS: Place a check mark in the appropriate column and/or box to indicate which data elements have been amended/coded.

## Legal Instrument Examiner (LIE)

	Amended	Data Element
<b>Class Data</b>  	<input type="checkbox"/>	<input type="checkbox"/> Prime/International Class
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	<input type="checkbox"/>	<input type="checkbox"/> 1b
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<b>Misc. Mark Data</b>	<input type="checkbox"/>	<input type="checkbox"/> Pseudo Mark
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	<input type="checkbox"/>	<input type="checkbox"/> Scan Drawing
	<input type="checkbox"/>	<input type="checkbox"/> Mark Description
<b>Section 2(f)</b>	<input type="checkbox"/>	<input type="checkbox"/> Disclaimer
	<input type="checkbox"/>	<input type="checkbox"/> Name/Portrait/Consent
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	<input type="checkbox"/>	<input type="checkbox"/> Assignment(s)/Name Change
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<input type="checkbox"/>	<input type="checkbox"/> Attorney	
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<input type="checkbox"/>	<input type="checkbox"/> Attorney Docket Number	
<input type="checkbox"/>	<input type="checkbox"/> Correspondence Firm Name/Address	

I certify that all corrections have been entered in accordance with text editing guidelines.

RH  
LIE

12/4/01  
DATE

Other: \_\_\_\_\_

# TRADEMARK EXAMINATION WORKSHEET

☒ AMENDMENT STATEMENT      ☐ NO CHANGE      PUBLICATION/REGISTRATION STATEMENT  
 Name: DEBORAH MARTIN      L.O. 101      Date 09/ /01      Serial No. 76/088982

INSTRUCTIONS: Place a check mark in the appropriate column and/or box to indicate which data elements have been amended/coded.

## Legal Instrument Examiner (LIE)

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		<input checked="" type="checkbox"/> Attorney Docket Number	
		<input checked="" type="checkbox"/> Correspondence Firm Name/Address	

I certify that all corrections have been entered in accordance with text editing guidelines.

DRM  
 LIE

09/ /01  
 DATE

Other: \_\_\_\_\_

20-101

**THOMPSON & KNIGHT**

L.L.P.

ATTORNEYS AND COUNSELORS

1700 PACIFIC AVENUE • SUITE 3300  
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e-mail: mothersbaughk@tklaw.com

AUSTIN  
DALLAS  
FORT WORTH  
HOUSTON  
MONTERREY, MEXICO

June 13, 2001

**EXPRESS MAIL NO. ELEL655263379US**

Commissioner for Trademarks  
2900 Crystal Drive  
Box Responses - No Fee  
Arlington, Virginia 22202-3513



06-13-2001

U.S. Patent & TMO/TM Mail Rpt Dt #26

Attn: Paula M. Mahoney  
Law Office 101

**Re: Response to Office Action No. 1**  
**Mark: BOI NA BRAZA (Int'l Cl. 42)**  
**Serial No.: 76/088,982**  
**Filed: July 14, 2000**

Dear Ms. Mahoney:

I enclose an original Response to Office Action No. 1 for the above-referenced trademark application.

Please acknowledge receipt of the enclosed material by date stamping and returning the enclosed stamped and self-addressed postcard.

Please direct all correspondence and telephone communications regarding this application to:

Kristy Bullard Mothersbaugh, Priscilla L. Duncel, Pamela S. Ratliff, Lee Ann Wheelis, Stacy Dunlop,  
Heather C. Brunelli or Jocelyn R. Dabeau  
Thompson & Knight L.L.P.  
1700 Pacific Ave., Suite 3300  
Dallas, Texas 75201-4693  
(214) 969-1700

I appreciate your assistance with this matter.

Very truly yours,

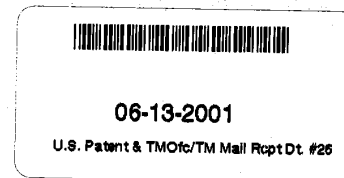
*Kristy Bullard Mothersbaugh*  
Kristy Bullard Mothersbaugh

KBM/co  
Enclosures

TRADEMARK LAW OFFICE 101  
Serial Number: 76/088982  
Mark: BOI NA BRAZA & DESIGN  
\*\*Please Place on Upper Right Corner\*\*  
\*\*of Response to Office Action ONLY\*\*

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Mark: BOI NA BRAZA & Design  
Serial No.: 76/088,982  
Filing Date: July 14, 2000  
International Class: 42  
Applicant: Boi Na Braza, Inc. (a Texas corporation)  
4025 William D. Tate  
Grapevine, Texas 76051  
Examining Attorney: Paula M. Mahoney  
Law Office 101  
Office Action Mailing Date: December 22, 2000



**RESPONSE TO OFFICE ACTION NO. 1**

Commissioner for Trademarks  
BOX RESPONSES  
NO FEE  
2900 Crystal Drive  
Arlington, VA 22202-3513

Dear Ms. Mahoney:

Applicant seeks registration on the Principal Register of the mark BOI NA BRAZA & Design (the "Design Mark"), as referenced above. In response to Office Action No. 1, dated December 22, 2000, in the above-referenced matter, Applicant submits the following remarks:

**REMARKS**

**English Translation of Mark**

In Office Action No. 1, the Examining Attorney asked Applicant to provide an English

Part IV  
translation of the wording BOI NA BRAZA. Applicant respectfully submits that the English translation of this wording is "ox in embers." The mark does not translate into "steakhouse," does not have any meaning in the relevant trade or industry, and has no geographic significance.

**Unity of Ownership with Serial No. 75/748,967**

In Office Action No. 1, the Examining Attorney requested that Applicant explain the relationship between Applicant and the owner of a prior pending application for the word mark BOI NA BRAZA, Serial No. 75/748967, (the "Cited Mark" or "Word Mark"). The Office Action requires that the two entities owning the Design Mark and the Cited Mark constitute a "single source" and that there is "unity of control" over these two marks in order for Applicant to avoid a rejection based on likelihood of confusion under section 2(d).

Applicant for the Design Mark is Boi Na Braza, Inc., a Texas corporation, whereas the owner of the Cited Mark is The Matheus Brothers, a Texas partnership consisting of Julio, Joseph, and Jonas Matheus. At the time the application for the Word Mark was filed, the brothers had not yet formed a corporation. However, by the time the application to register the Design Mark was filed, the brothers had formed Boi Na Braza, Inc., of which they are the principal shareholders, and filed the current application for registration for the Design Mark with the corporation as the owner.

The brothers have now executed an assignment agreement transferring the Word Mark from the partnership to the corporation. Attached is a copy of the recordation cover sheet and the assignment agreement filed today with the PTO Assignment Division, showing the assignment of the Cited Mark from the partnership to the corporation. Therefore, the two marks (the Word Mark and the Design Mark) are now both owned by Boi Na Braza, Inc., and such unity of ownership has

No  
Assignment  
Recorded  
9/20/11




been recorded in the PTO records. Because there is unity of ownership, there is no likelihood of confusion to prevent registration of the above-referenced mark.

Based on these remarks and the enclosed assignment agreement showing that the Cited Mark is now owned by Applicant, Applicant respectfully submits that the application is now in proper form for approval and requests prompt favorable action.

Respectfully submitted,

THOMPSON & KNIGHT L.L.P.

Dated June 13, 2001

  
Kristy Bullard Mothersbaugh  
1700 Pacific Ave., Suite 3300  
Dallas, TX 75201  
(214) 969-1700  
(214) 969-1751 fax

Attorneys for Applicant  
Boi Na Braza, Inc.

# THOMPSON & KNIGHT

L.L.P.

ATTORNEYS AND COUNSELORS

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DALLAS, TEXAS 75201-4693  
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DIRECT DIAL:

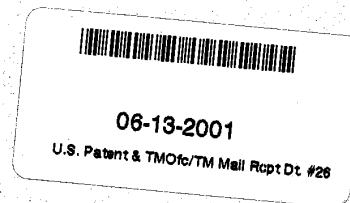
(214) 969-1562

E-Mail: [mothersbaughk@tklaw.com](mailto:mothersbaughk@tklaw.com)

AUSTIN  
DALLAS  
FORT WORTH  
HOUSTON  
MONTERREY, MEXICO

June 13, 2001

**EXPRESS MAIL NO. EL655263396US**  
Commissioner for Patents And Trademarks  
BOX ASSIGNMENTS  
Washington, D.C. 20231



**Re: Trademark Recordation Cover Sheet**  
**Trademark Assignment Agreement for Trademark Ser. No. 75/748967**

Dear Sir:

Enclosed please find the Recordation Cover Sheet and Trademark Assignment Agreement referenced above. A check to cover the required filing fee of \$40.00 is also enclosed.

Please acknowledge receipt of the enclosed materials by date-stamping and returning the enclosed pre-paid self-addressed postcard.

Please direct all correspondence and telephone communications regarding this matter to:

**Kristy Bullard Mothersbaugh**  
**Thompson & Knight L.L.P.**  
**1700 Pacific Avenue, Suite 3300**  
**Dallas, Texas 75201-4693**  
**(214) 969-1700**

Sincerely,

Kristy Bullard Mothersbaugh

Enclosures

FORM PTO-1618A

Expires 06/30/99  
OMB 0651-0027U.S. Department of Commerce  
Patent and Trademark Office  
**TRADEMARK**

06-13-2001

U.S. Patent &amp; TMO/TM Mail Room Dt: 426

RECORDATION FORM COVER SHEET  
**TRADEMARKS ONLY**

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

**Submission Type**☒ New

Resubmission

(Non-Recordation)

☐ Document ID #☐ Correction of PTO Error

Reel #

Frame #

☐ Corrective Document

Reel #

Frame #

**Conveyance Type**☒ Assignment☐ License☐ Security Agreement☐ Nunc Pro Tunc Assignment☐ MergerEffective Date  
Month Day Year☐ Change of Name☐ Other**Conveying Party**☐ Mark if additional names of conveying parties attached

Name The Matheus Brothers

Formerly

☐ Individual☒ General Partnership☐ Limited Partnership☐ Corporation☐ Association☐ Other☒ Citizenship/State of Incorporation/Organization

TEXAS

Execution Date  
Month Day Year**Receiving Party**☐ Mark if additional names of conveying parties attached

Name Boi Na Braza, Inc.

DBA/AKA/TA

Composed of

Address (line 1) 4025 William D. Tate

Address (line 2)

Address (line 3) Grapevine

City

Texas

State/Country

76501

Zip Code

☐ Individual☐ General Partnership☐ Limited Partnership☒ Corporation☐ Association☐ Other☒ Citizenship/State of Incorporation/Organization

TEXAS

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

**FOR OFFICE USE ONLY**

Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

Mail documents to be recorded with required cover sheet(s) information to:  
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

## Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

## Correspondent Name and Address

Area Code and Telephone Number

214-969-1562

Name

KRISTY BULLARD MOTHERSBAUGH

Address (line 1)

THOMPSON &amp; KNIGHT L.L.P.

Address (line 2)

1700 PACIFIC AVENUE, SUITE 3300

Address (line 3)

DALLAS, TEXAS 75201

Address (line 4)

## Pages

Enter the total number of pages of the attached conveyance document  
including any attachments.

#

1

## Trademark Application Number(s) or Registration Number(s)

☐ Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)

Registration Number(s)

75/748967

## Number of Properties

Enter the total number of properties involved.

#

1

## Fee Amount

Fee Amount for Properties Listed (37 CFR 3:41): \$

40.00

Method of Payment:

Enclosed ☒Deposit Account ☐

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number:

#

20-0821

Authorization to charge additional fees:

Yes

☒

No

☐

## Statement and Signature

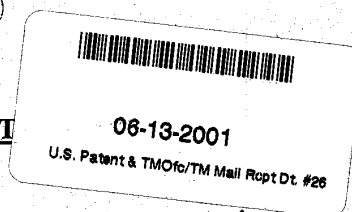
To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

KRISTY BULLARD MOTHERSBAUGH  
Name of Person Signing

Signature

Date Signed

**TRADEMARK ASSIGNMENT AGREEMENT**



This Trademark Assignment Agreement (this "Agreement"), effective as of 29 MAY, 2001, (the "Effective Date"), is made by and between the Matheus Brothers, a Texas partnership ("Assignor"), and Boi Na Braza, Inc., a Texas corporation ("Assignee").

**WITNESSETH:**

WHEREAS, Assignor has adopted and used the service mark BOINA BRAZA in connection with restaurant services (the "Mark") and has applied for registration of the Mark with the United States Patent and Trademark Office (Serial No. 75/748967);

WHEREAS, Assignor has agreed to assign and Assignee has agreed to acquire all of Assignor's right, title, and interest in and to the Mark, both registered and common law, the goodwill of the business symbolized thereby, and the right to recover damages and profits for past infringement thereof; and

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Assignor hereby assigns, transfers and conveys unto Assignee all of Assignor's right, title and interest in and to the Mark, the goodwill of the business symbolized thereby, and the right to recover damages and profits for past infringement thereof.

2. This Agreement shall be governed by and construed in accordance with the laws of the United States of America and of the State of Texas.

IN WITNESS WHEREOF, Assignor has caused its duly authorized representative to execute this Assignment effective as of the date first above written.

THE MATHEUS BROTHERS  
(a Texas partnership)

By: [Signature]

Name: JONAS S. MATHEUS

Title: PARTNER

# UNITED STATES PATENT AND TRADEMARK OFFICE

<b>SERIAL NO.</b> <b>APPLICANT</b> 76/088982    Boi Na Braza, Inc.		<b>PAPER NO.</b>   <b>ADDRESS:</b> Commissioner for Trademarks 2900 Crystal Drive Arlington, VA 22202-3513 www.uspto.gov <small>If no fees are enclosed, the address should include the words "Box Responses - No Fee."</small>
<b>MARK</b> BOI NA BRAZA AND DESIGN		
<b>ADDRESS</b> PRISCILLA L. DUNCKEL THOMPSON & KNIGHT 1700 PACIFIC AVENUE, SUITE 3300 DALLAS, TEXAS 75201-4693	<b>ACTION NO.</b> 01  <b>MAILING DATE</b> 12/22/00  <b>REF. NO.</b>  20175.00003	
FORM PTO-1525 (5-90)                      U.S. DEPT. OF COMM. PAT. & TM OFFICE		

Please provide in all correspondence:  
 1. Filing Date, serial number, mark and Applicant's name.  
 2. Mailing date of this Office action.  
 3. Examining Attorney's name and Law Office number.  
 4. Your telephone number and ZIP code.

**A PROPER RESPONSE TO THIS OFFICE ACTION MUST BE RECEIVED WITHIN 6 MONTHS FROM THE DATE OF THIS ACTION IN ORDER TO AVOID ABANDONMENT.**  
*For your convenience and to ensure proper handling of your response, a label has been enclosed. Please attach it to the upper right corner of your response. If the label is not enclosed, print or type the Trademark Law Office No., Serial No., and Mark in the upper right corner of your response.*

RE: Serial Number: 76/088982

The assigned examining attorney has reviewed the referenced application and determined the following.

No Conflicting Registered Marks Noted

The examining attorney has searched the Office records and has found no similar *registered* mark which bars registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d). TMEP section 1105.01. Please note that the examining attorney has found a potentially conflicting pending application.

Prior Pending Application

The examining attorney encloses information regarding pending Application Serial No. 75/748967. The filing date of the referenced application precedes the applicant's filing date. It appears the applicant's are related. The Trademark Trial and Appeal Board held that to overcome a refusal under Section 2(d) based on such a relationship between the parties, the applicant must demonstrate that the two entities constitute a single "source." *In re Wella A.G.*, 5 USPQ 1359 (TTAB 1987).

To establish this "unity of control," the applicant may assert in an affidavit or declaration under 37 C.F.R. Section 2.20 that the applicant or registrant owns substantially all of the other entity and asserts control over the activities of the other entity, including its trademarks. In the alternative,

the applicant may submit a consent agreement or other evidence to establish no likelihood of confusion. See *In re Sumitomo Electric Indus., Ltd.*, 184 USPQ 365 (TTAB 1974).

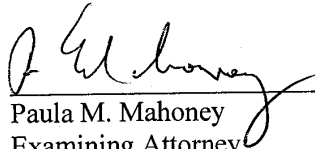
Translation

The applicant must submit an English translation of all foreign wording in the mark. 37 C.F.R. Section 2.61(b); TMEP section 809. The applicant may adopt the following, if accurate: "OX IN EMBERS."

Status Information

Current status and status date information is available, via push button telephone, for all federal trademark registration and application records maintained in the automated Trademark Reporting and Monitoring (TRAM) system. The information may be accessed by calling (703) 305-8747 from 6:30 a.m. until midnight, Eastern Time, Monday through Friday, and entering a seven-digit registration number or eight-digit application number, followed by the "#" symbol, after the welcoming message and tone. Callers may request information for up to five registration number or application number records per call. Additional information is available via our website at [www.uspto.gov](http://www.uspto.gov).

If the applicant has any questions or needs assistance in responding to this Office action, please telephone the assigned examining attorney.

  
\_\_\_\_\_  
Paula M. Mahoney  
Examining Attorney  
Law Office 101  
703.308.9101 x103

\*\*\* User: pmahoney \*\*\* Serial Number: 75748967 \*\*\* 12/21/00 12:15:06 AM \*

[Typed Drawing]

Mark

BOI NA BRAZA

Translation

The English translation of "BOI NA BRAZA" means "ox in embers".

Goods and Services

IC 042. US 100 101. G & S: COMPUTER NETWORKS HUBS, SWITCHES AND  
ROUTERS FOR CONNECTING RESTAURANT SERVICES

Mark Drawing Code

(1) TYPED DRAWING

Serial Number

75748967

Filing Date

July 1, 1999

Filed ITU

FILED AS ITU

Publication for Opposition Date

December 5, 2000

Owner Name and Address

(APPLICANT) MATHEUS BROTHERS, THE JULIO C. MATHEUS, USA; JOSEPH R.  
MATHEUS, USA; JONAS S. MATHEUS, BRAZIL PARTNERSHIP TEXAS 415 DUNCAN PERRY  
RD ARLINGTON TEXAS 76011

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Live Dead Indicator

LIVE

Attorney of Record

PAMELA S RATLIFF

\*\*\* Search: 5 \*\*\* Document Number: 3 \*\*\*



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Mark: BOI NA BRAZA & Design  
Int'l Cl.: 42  
Applicant: Boi Na Braza, Inc. (a Texas corporation)  
415 Duncan Perry Road  
Arlington, Texas 76011

APPLICATION FOR SERVICE MARK REGISTRATION

Assistant Commissioner for Trademarks  
2900 Crystal Drive  
BOX NEW A.P.  
FEE  
Arlington, Virginia 22202-3513

Dear Sir:

The above-identified applicant requests registration of the mark shown in the accompanying drawing in the United States Patent & Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. 1051 et. seq., as amended) for the following services: restaurant services in Int'l Class 42.

Applicant has a bona fide intention to use the mark in commerce on or in connection with the above-identified services. The intended manner or mode of use of the mark in connection with the services is that the mark will be used in advertising and marketing materials featuring Applicant's services and other ways customary in the trade.

I, Julio C. Matheus, declare that I am President of Applicant, and am authorized to make this declaration and execute this instrument on behalf of Applicant; that I believe Applicant to be the owner of the service mark sought to be registered, or, if the application is being filed under 15 U.S.C. 1051(b), I believe Applicant to be entitled to use such mark in commerce; that to the best of my knowledge and belief, no other person, firm or corporation has the right to use said mark in commerce, either in the identical form or in such near resemblance thereto as to be likely, when applied to the goods or services of such other person, firm or corporation, to cause confusion, or to cause mistake, or to deceive; that all statements made herein are of my own knowledge are true; that all statements made herein on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of this application and any registration resulting therefrom.

SIGNED this 06 day of July, 2000.

BOI NA BRAZA, INC.

By: 

Name: Julio C. Matheus

Title: President

# THOMPSON & KNIGHT

L.L.P.

ATTORNEYS AND COUNSELORS

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MONTERREY, MEXICO

DIRECT DIAL:

(214) 969-2503  
e-mail: dunckelp@tklaw.com

July 14, 2000

VIA EXPRESS MAIL NO. EM254280511US

Assistant Commissioner for Trademarks  
BOX NEW APP  
FEE  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

Re: Application for Trademark Registration  
Our File: 20175.00003  
Applicant: Boi Na Braza, Inc. (a Texas corporation)  
Mark: BOI NA BRAZA & Design  
Int'l Class: 42

Dear Sir:

I enclose an original intent to use application to register the above-referenced trademark. Please acknowledge receipt of the enclosed material by date stamping and returning the enclosed stamped and self-addressed postcard.

Please withdraw the \$325 filing fee from Deposit Account No. 20-0821 of Thompson & Knight L.L.P.

Please direct all correspondence and telephone communications regarding this application to Priscilla L. Dunkel at the following address:

Priscilla L. Dunkel  
Pamela S. Ratliff  
Lee Ann Wheelis  
Thompson & Knight L.L.P.  
1700 Pacific Avenue, Suite 3300  
Dallas, Texas 75201-4693

I appreciate your assistance in this matter.

Very truly yours,

  
Priscilla L. Dunkel

PLD:jhr

cc: Rex Cooper (w/o encl.)

Enclosures

20175 00003 Dallas 1167188.1

76088982

TRADEMARK APPLICATION SERIAL NO.

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE  
FEE RECORD SHEET

07/20/2000 JIMBLEY 00000044 200821 76088982

01 FC:361 325.00 CH